

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS. CRIMINAL NO. 3:14-cr-00111-HTW-FKB

CHRISTOPHER B. EPPS, ET AL.

AND

UNITED STATES OF AMERICA

VS. CRIMINAL NO. 3:15-cr-69-HTW-FKB

SAM WAGGONER

EVIDENTIARY HEARING

BEFORE THE HONORABLE HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE
JUNE 9, 2016
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. DARREN LaMARCA

FOR DEFENDANT EPPS: MR. JOHN COLETTE
MR. SHERWOOD COLETTE

FOR DEFENDANT McCRARY: MR. CARLOS TANNER

FOR DEFENDANT WAGGONER: MR. NICHOLAS R. BATN

1 REPORTED BY: BRENDA D. WOLVERTON, RPR, CRR, FCRR

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1 THE COURT: Good morning. First of all, let me
2 announce that we were supposed to start this morning at 9:30.
3 We are starting late because I took up another matter this
4 morning. This matter was on the schedule for yesterday, some
5 civil matters, and so yesterday afternoon I took up some
6 hearings in some civil cases. The hearings ended at about
7 5:00 o'clock except for one hearing, and so I took that hearing
8 anyway at 5:00 o'clock to try to conclude it because those
9 parties had been scheduled and they had waited patiently for
10 their turn.

11 The case before them had more issues than we
12 anticipated, so we didn't start that hearing until 5:00 o'clock
13 last night. We went until 7:30 last night, and then at 7:30 I
14 recessed and advised the parties to come back this morning at
15 8:30 to complete their arguments hoping that we could finish up
16 in about an hour.

17 The arguments were substantial, and so it went over
18 the hour's timeframe and just concluded just a few moments ago.
19 But those parties had been patiently waiting for their
20 opportunity to make their arguments in this other civil case
21 and therefore I wanted to get to it as soon as I could. So
22 that's why we are starting late because I heard those
23 arguments. And now that I have finished those arguments, we
24 are now ready to proceed on this matter.

25 So let me turn to the prosecution, and call your case.

1 MR. LAMARCA: Thank you, Your Honor. Your Honor,
2 before the court is United States versus Christopher Epps and
3 Cecil McCrory. This is in Criminal Number 3:14cr111 and also
4 present in a related case of U.S. versus Sam Waggoner, Criminal
5 No. 3:14cr69. Mr. Waggoner is present, Your Honor, with his
6 attorney, Nick Bain, for the proceedings today. And more
7 specifically with regard to Criminal No. 3:14cr11, Mr. Epps is
8 present with his attorney, John Colette. In addition, he has
9 as cocounsel Sherwood Colette. Mr. McCrory is present with his
10 attorney, Carlos Tanner, Your Honor, and we are here today for
11 an evidentiary hearing for the court to determine the net
12 benefit as to the contracts that were the subject of the
13 indictment as well as relevant conduct to that indictment
14 pending -- to which Mr. Epps and Mr. McCrory have pled guilty
15 at least as to the money laundering count in Count 23, being a
16 conspiracy, and then in addition with Mr. Epps pleading as to
17 failing to file or for filing a fraudulent tax return. That
18 was charged in Count 44. And the government is ready to
19 proceed with that evidentiary hearing.

20 THE COURT: Now, will you introduce the other members
21 at your counsel table?

22 MR. LAMARCA: Yes, Your Honor. Seated immediately to
23 my left is Molly Blythe, a special agent with the FBI.

24 THE COURT: Okay.

25 MR. LAMARCA: And to her left is Pat Lemon. He is an

1 Assistant United States Attorney working on this matter as
2 well. And to his left is Tye Breedlove who is also a special
3 agent with the FBI.

4 THE COURT: And these persons have been involved in
5 this lawsuit all along, so the court knows them. And good
6 morning to all of you.

7 MR. LEMON: Good morning, Your Honor.

8 THE COURT: Thank you. Let me turn over to the
9 defense and have defense counsel introduce themselves to the
10 record as well as their clients.

11 MR. COLETTE: Your Honor, John Colette appearing on
12 behalf of Christopher Epps. Sherwood Colette, cocounsel.
13 Kevin Massey is my law clerk, Your Honor, here to keep me
14 straight on the law.

15 THE COURT: All right. And you are here with your
16 client, Mr. Christopher Epps. And good morning again to you,
17 Mr. Epps.

18 DEFENDANT EPPS: Good morning, Your Honor.

19 THE COURT: Next.

20 MR. BAIN: Good morning, Your Honor. Nick Bain
21 appearing on behalf of Sam Waggoner, and Mr. Waggoner is with
22 me today in court as well.

23 THE COURT: All right. And good morning to both of
24 you. All right. And?

25 MR. TANNER: Good morning, Your Honor. Carlos Tanner

1 on behalf of Mr. Cecil McCrory. Mr. McCrory is here with me
2 seated to my immediate right.

3 THE COURT: And good morning to both of you. Now,
4 Mr. Tanner, will you be participating in this hearing?

5 MR. TANNER: Well, Your Honor, as the court -- if the
6 court recalls, at the last hearing where we appeared before
7 this court, on that particular day, that was the date -- I
8 don't have it offhand, but it was the date that was set for Mr.
9 Epps' sentencing. At that sentencing, the government announced
10 that it had uncovered a number of contracts that were related
11 to Mr. Epps' sentencing and that needed to be produced to Mr.
12 Epps and his counsel and for which evidentiary hearings would
13 need to be held by Your Honor.

14 Well, Your Honor, at that time, the court asked the
15 parties that were parties to that hearing, particularly to the
16 prosecution, whether those matters would affect my client,
17 Mr. McCrory. I was seated in the back of the courtroom. The
18 court called me forward. And, for that reason, I am present
19 and the court put me down as a party to the evidentiary
20 hearing. And to the extent that any of these contracts do
21 affect my client, I would ask for an opportunity to
22 cross-examine anybody that attempts to put forth documents that
23 suggest some -- that affect my client in some negative way,
24 Your Honor.

25 THE COURT: But now, at that last session, you advised

1 the court that your client is contemplating a withdrawal of his
2 plea.

3 MR. TANNER: That's true, Your Honor.

4 THE COURT: Is that still the same situation?

5 MR. TANNER: That is still the same situation, Your
6 Honor. As I indicated to the court at my first appearance, if
7 I can go back, Your Honor, I got involved in this case and was
8 retained by Mr. McCrory for the record after his guilty plea,
9 well after his guilty plea. At that time, I was provided a
10 large number of compact discs and DVDs of evidence that the
11 government intended to use against Mr. McCrory and that were
12 used to effectuate his -- or get him to plead guilty.

13 Your Honor, I indicated to the court even though my
14 case, Mr. McCrory's case, was not before the court during the
15 last hearing, when the court called me forward, I did announce
16 without being questioned on the matter from the court, I wanted
17 to give the court as well as the government notice that I was
18 intending to file a motion and that I had been working on a
19 motion to withdraw my client's guilty plea. At that time, I
20 told the court that I thought it would be a short time well
21 before now that I would get that motion filed. I have still
22 been working on it. And, as this court is well aware, one of
23 the factors that the court has to consider on making a
24 determination whether to permit my client to withdraw the
25 guilty plea, one of the factors is time. And I believe I can

1 address that based on one of several trials that I have had or
2 at least one trial that I have had and a number that have been
3 set, two of which were continued on the morning of trial that I
4 did not know that I was going to have to defend at the time I
5 made that announcement to the court.

6 But I have never indicated to the government that I
7 had changed my mind. I have never indicated to the court. And
8 as I stand here today, I represent that Mr. McCrory is still
9 expecting to file that motion to withdraw the guilty plea. And
10 none of -- and the court -- when I raised that issue the last
11 time, the court asked me while I had been working on that
12 motion whether I had known anything of this notion that the
13 government was intending to raise the loss amount from
14 \$300 million to \$800 million. And I was careful to tell the
15 court that I did not learn that. I learned that by surprise on
16 the morning of Mr. Epps' last scheduled sentencing hearing. So
17 that, in no way, had any bearing on whether I was working on or
18 intended to file on behalf of my client a withdrawal of his
19 guilty plea.

20 THE COURT: So when might you finish your pleading on
21 your motion to withdraw?

22 MR. TANNER: Your Honor, I am trying to get that done
23 within the next two weeks. I may be able to get it done before
24 then. But part of the issue is this, Your Honor, and it did
25 factor into my calculus to be sure on whether I thought that

1 that motion was ready to be filed.

2 The issue is when the government came to the court at
3 Mr. Epps' last hearing, it said that they had discovered all
4 these additional contracts to the tune of a half a billion
5 dollars. Well, I think that speaks to the matter of whether
6 discovery was done properly at the point at which Mr. -- it
7 could not have been done properly at the time Mr. McCrory
8 entered a guilty plea. And what I did not want to happen was
9 to have myself represent based on the discovery that I received
10 what was on those 77 discs that, for example, Mr. McCrory had
11 eight contracts that related to his conduct or that should
12 affect him or that impacted whether this court should deem him
13 to be guilty or not guilty such that he can make a claim of
14 innocence.

15 Well, if the government has 50 extra contracts that I
16 have not received, that I have not been able to review, then
17 that would certainly impact what I'm able to put in my motion.
18 And, you know, this kind of dovetails into part of what Mr.
19 Colette filed I think the day before yesterday or yesterday
20 morning. He filed a motion to continue these proceedings
21 because the government had said that they had, at the last
22 hearing, already discovered these -- this vast number of
23 additional contracts. Well, I didn't receive an additional
24 contract until Monday. And at that time, I still didn't even
25 receive it; it was just the matter that I was asked to or

1 invited to participate in a meeting to go over these materials
2 on Monday morning of this week.

3 Well, I don't know what these contracts are. I don't
4 know what they purport to be. I did understand only then that
5 a large number of these contracts don't even affect
6 Mr. McCrory, have nothing to do with Mr. McCrory in the
7 government's perspective on the sentencing of Mr. McCrory. The
8 problem is I believe those contracts, whether Mr. McCrory was a
9 party to them or consulted in them or anything else, I think
10 they relate to the argument that I want to make as to
11 Mr. McCrory's innocence. And so, for that reason, that also
12 factored into why I was not able to complete the motion, Your
13 Honor.

14 THE COURT: Have you discussed your possible
15 participation in this hearing with the prosecution?

16 MR. TANNER: Yes, Your Honor. We all anticipated
17 that, and that's why the government -- it wasn't at my urging.
18 Mr. LaMarca, he sent me the same e-mail on Friday that he sent
19 to Mr. Colette asking me to come over to meet. So the
20 government did meet with me on Monday morning to go over these
21 documents. And I know that the record reflects that
22 Mr. McCrory was provided notice via ECF that he was a part of
23 this hearing. So we were prepared or we were briefed on what
24 the government had gotten. And I understand that the
25 government only got it as of Friday, but I didn't get it to

1 where I could have a copy to review myself until yesterday.

2 THE COURT: All right. Thank you very much. Let me
3 turn to the prosecution. Mr. LaMarca, are you speaking?

4 MR. LAMARCA: Yes, Your Honor.

5 THE COURT: What about the involvement here of
6 Mr. McCrory and his counsel?

7 MR. LAMARCA: With regard to their participation in
8 this hearing, Your Honor?

9 THE COURT: That's correct.

10 MR. LAMARCA: The government would have no objection
11 to Mr. McCrory and his counsel participating in this hearing.
12 The matters that will be presented as far as contracts, the
13 consulting fees that were paid to Mr. McCrory and/or his
14 company, Investigative Research, will be brought out in
15 testimony today. For that reason and because those amounts, if
16 the court accepts those amounts, may impact Mr. McCrory as well
17 as his -- the court's loss calculation for him and his
18 guideline range, I see no objection or have no objection to
19 Mr. Tanner today and Mr. McCrory, that is, through Mr. Tanner
20 having the opportunity to question with regard to the figures
21 involved here.

22 And as far as the government is concerned, today's
23 hearing was as to the net value of these contracts so that the
24 court can take into consideration that when it applies the
25 guidelines to determine the guideline -- the recommended or the

1 suggested guideline sentence for Mr. Epps and later for
2 Mr. McCrory.

3 THE COURT: And what are you contending to be the
4 gross amount -- gross amount of the contracts?

5 MR. LAMARCA: Your Honor, we intend to put forward
6 today testimony that would prove today only roughly 500 -- in
7 excess of \$550 million.

8 THE COURT: 550 as the gross amount?

9 MR. LAMARCA: Yes, sir.

10 THE COURT: You said today. Didn't I hear a figure
11 earlier of \$800 million?

12 MR. LAMARCA: You did, Your Honor, and that will come
13 in through some testimony that we will request of the court to
14 convene at a later date.

15 THE COURT: How many witnesses do you intend to call
16 today?

17 MR. LAMARCA: 10, Your Honor.

18 THE COURT: 10. And how long do you think those
19 testimonies will take?

20 MR. LAMARCA: From the government's perspective, 20
21 minutes each.

22 THE COURT: Have you provided the defense with the
23 names of these witnesses?

24 MR. LAMARCA: I have provided to the defendant the
25 documents, the names of those witnesses, some of which the

1 government learned this morning. The entities that were
2 subpoenaed, the defense has been provided with those. The
3 representative for those particular companies, I don't believe
4 they know who they are even as we speak now.

5 THE COURT: What about the documents that would
6 purportedly undergird these particular amounts? Have they been
7 provided those documents?

8 MR. LAMARCA: They have been provided those. The
9 government provided those to them as the government received
10 them or at least within 24 hours. We did receive some on
11 Friday, did not show them to the defendant until Monday of this
12 week.

13 THE COURT: And today being Thursday. So what time
14 Monday were they shown these documents?

15 MR. LAMARCA: Well, we were to meet at 9. I think Mr.
16 Colette had a prior engagement, and he appeared at the U.S.
17 Attorney's Office roughly I would say 10:00 o'clock. And, of
18 course, Your Honor, those were not all the documents that had
19 been produced; those were the documents that were produced up
20 to that point.

21 THE COURT: So you are saying that more documents were
22 produced to you later?

23 MR. LAMARCA: Yes, sir.

24 THE COURT: And who was producing these documents?

25 MR. LAMARCA: The entities that had been subpoenaed

1 for court today, those who had entered contracts with M.D.O.C.
2 and through their representative, their counsel, most of whom
3 have counsel in this courtroom today, provided those documents
4 either by overnight delivery or through secure e-mail, in that
5 fashion.

6 THE COURT: And did you expect those documents at an
7 earlier date?

8 MR. LAMARCA: I was hopeful I could have received them
9 at an earlier date. My conversations with the various counsel
10 for these entities indicated that they were working diligently
11 on providing these documents. They were hopeful, every single
12 one of them, to have those documents to the government and to
13 the defense in time or from the government to the defense in
14 time that everyone could agree hopefully on what those
15 documents say. They were strictly accounting documents. So
16 that they could avoid the necessity of having to appear in
17 court. However, getting those documents at such a late time
18 and speaking with defense counsel, we got to the point that we
19 flew everyone in today.

20 The government, based upon the documents that we
21 received, is ready to put most of these -- those who are here
22 today on the witness stand to explain the documents. These are
23 accounting procedures. Bookkeepers are here, comptrollers from
24 these various companies that had contracted with M.D.O.C. and
25 some other subsidiaries or affiliates of M.D.O.C., contracts

1 nonetheless that were involved in this situation or in this
2 indictment. And the government is ready to put these witnesses
3 on the stand to explain the documents that they have submitted
4 in an effort for the court to see what the total value of that
5 contract was and then what the net benefit.

6 THE COURT: Where are these witnesses coming from?

7 MR. LAMARCA: Some came from St. Louis. Attorneys
8 came from Washington, D.C. Some came from South Florida and
9 attorneys from South Florida. We also have -- and we have some
10 local attorneys. And I may have missed one or two from out of
11 state. And Texas.

12 THE COURT: So have you and your side had the
13 opportunity to sit down with these witnesses?

14 MR. LAMARCA: We have talked to them briefly by
15 telephone. And when I say briefly, 10 minutes, Your Honor.
16 And some I talked to this morning, as a matter of fact, out in
17 the hallway for about five minutes. The documents they sent in
18 large part for most of these were very self-explanatory. It
19 takes just a very rudimentary education in accounting to
20 discern. Each of the entities and through their counsel were
21 directed to the *Landers* case as to what the court may be
22 looking for as far as net benefit, the *Landers* case having been
23 broached by the defense initially when the PSR came out basing
24 its guideline range on the gross value of the contracts.

25 The government conceded that *Landers* applied and so

1 directed each of the defense counsel to that particular
2 decision. The subpoena that was issued to the corporate
3 entities requested certain documents to be produced. And in
4 most instances, those documents have been produced, and those
5 were the documents that we were waiting on and to disclose to
6 defense counsel.

7 We have received those documents. We believe that any
8 questioning of the methodology, how these numbers were arrived
9 at, can be done through the examination of the witnesses who
10 have appeared. And based upon the documents that have been
11 supplied, the government would like to go forward to elicit
12 that testimony to explain what the figures are and how the
13 corporate entities arrived at the total value of the contract
14 to them as well as the net benefit using the *Landers* decision
15 as a guide.

16 THE COURT: On a prior day the topic arose about the
17 revelation of unindicted coconspirators. Will any of these
18 documents touch upon unindicted alleged coconspirators?

19 MR. LAMARCA: Yes, Your Honor.

20 THE COURT: And will any of the documents here reveal
21 names of alleged unindicted coconspirators previously not
22 revealed?

23 MR. LAMARCA: The documents themselves may not; the
24 testimony may.

25 THE COURT: The testimony of your witnesses might hit

1 on those particular points?

2 MR. LAMARCA: That is correct. And my request of the
3 court and of defense counsel would be whether defense counsel
4 first disputed whether the contract itself was tainted. If
5 defense counsel does dispute whether it was tainted, then we
6 would elicit some testimony to show that particular contract
7 was tainted.

8 THE COURT: I don't understand what you mean by
9 tainted.

10 MR. LAMARCA: That it was actually involved.

11 THE COURT: That it was actually what?

12 MR. LAMARCA: Involved in the conspiracy scheme and
13 this bribery scheme, this kickback scheme that has been spread
14 over the pages of the indictment, Your Honor.

15 THE COURT: And how would you propose to show that
16 relationship?

17 MR. LAMARCA: Through testimony of an FBI agent who
18 has interviewed both Mr. Epps and Mr. McCrory, as well as
19 others, but primarily relying on the testimony of Mr. Epps and
20 Mr. McCrory. I say testimony. Conversations.

21 THE COURT: In what order do you hope to call your
22 witnesses?

23 MR. LAMARCA: I have an order, Your Honor, I would
24 call if there is absolutely -- if there is a dispute as to that
25 particular entity and whether those contracts were improperly

1 influenced, I would call the agent to testify as to the
2 influence on that particular contract and then intend to call
3 the representative of the company, a financial representative,
4 so that we can show to the court the gross value of that
5 contract and the net benefit.

6 When we move to the next company, if the defense
7 disagrees that those contracts are tainted, I would put the
8 agent on the stand so that the agent can testify as to what
9 Mr. McCrory and Mr. Epps said about that originally to the
10 agents and then put the representative of the company on the
11 stand to explain to the court what the gross value of that
12 contract and revenue was to the company and what the net
13 benefit was to the company.

14 And this is all in response to the *Landers* decision so
15 that the court can total up the net benefit of all of these
16 improperly influenced contracts to arrive at a guideline
17 calculation as required by the sentencing guidelines, Your
18 Honor. As the court knows, if the guideline calculation as to
19 the net benefit which the court can reasonably ascertain not to
20 a mathematical certainty but to reasonably ascertain, once you
21 reach that net benefit and total all of these contracts, then
22 that would drive the guideline calculations if those net
23 benefits exceeded the bribe amounts of 1.4 million that had
24 been paid to Mr. Epps.

25 THE COURT: This procedure you're describing, have you

1 discussed this with the defense?

2 MR. LAMARCA: No, I have not, Your Honor.

3 THE COURT: So this is the first time they have heard
4 this is how you wish to proceed?

5 MR. LAMARCA: Yes, Your Honor.

6 THE COURT: Is there anything else that you hope to
7 present today and in what manner that the defense is currently
8 unaware?

9 MR. LAMARCA: There are a couple of corporate entities
10 who have asked that the documents that would be presented, that
11 the court would enter a protective order for proprietary
12 information being disclosed within those documents. And I
13 would, on behalf of those entities, ask the court if the court
14 would entertain or consider hearing from those entities at a
15 sidebar to explain to the court why they wish that those
16 particular documents and testimony about those documents would
17 be under seal on a proprietary information reason and maybe
18 several other reasons that I'm not aware of. Other than
19 that --

20 THE COURT: So would that testimony or that
21 presentation be done outside the presence of the public?

22 MR. LAMARCA: It would if the court were to seal and
23 find that information --

24 THE COURT: Why should the court allow that?

25 MR. LAMARCA: Your Honor, I would let the court hear

1 from the particular attorneys for that company to determine
2 whether the court should or should not allow that to take
3 place.

4 THE COURT: Okay. Thank you so much. Mr. Colette,
5 you rose a few moments ago to make some comments. I will
6 listen to you.

7 MR. COLETTE: Your Honor, we were here on April 11th
8 of 2016 when the presentence report was prepared and revised
9 presentence report was prepared. My notes reflect that you
10 ordered the government to issue subpoenas to all these people.
11 And they said they were going to do it that week, they would
12 have it returnable in 30 days and that we would have two or
13 three weeks to look at it. They did not issue a Rule 17(c)
14 subpoena, Your Honor. Look at the subpoena they have issued.
15 They are returnable for this morning.

16 THE COURT: Put it on the Elmo there.

17 MR. COLETTE: I am smart and I am quick, but I can't
18 read \$800 million worth of documents in a day and a half and I
19 don't even have them. There is no way we can go forward. They
20 dropped the ball.

21 THE COURT: What do you mean you don't have them?

22 MR. COLETTE: I don't have them. He just said -- he
23 just told you. There is 15 companies listed in the presentence
24 report that's prepared. Those 15 companies list
25 \$868,282,712.85 of contracts that were let by M.D.O.C. and

1 these various entities over the period of five or six years.
2 We all know that although Athena included that in the revised
3 presentence report that that gross contract amount, it's not a
4 loss, number one. Make that clear. It's not a loss. The
5 State of Mississippi nor M.D.O.C., nobody lost any money. That
6 number are just the value of the contracts to provide services
7 and commissary and telephones.

8 And the court says you don't use that amount. The
9 court says under 2C1.1 you have got four things that you can
10 consider, Your Honor, in awarding the specific offense
11 characteristic. One is the amount of the payment. We know
12 that. That's not disputed. He got 1.4 million. You can use
13 that. And that's clear.

14 Then it says, or you have to use the net benefit in
15 return for the bribe. That's what they are attempting to do.
16 So they have got to say, Okay, for example, on this contract,
17 it was a million dollars. And they have got to show that there
18 was a bribery involved with that. What was the net benefit?
19 The Fifth Circuit hasn't been really clear on how you determine
20 that benefit. Now, they have talked about what not to possibly
21 include, and that's why we are talking about the *Landers* case
22 where it says you deduct -- the court in *Landers* used the gross
23 amount and the Fifth Circuit said that's wrong. So they said,
24 No, you have got to deduct the direct cost. And it said you
25 don't deduct indirect here because they didn't raise it and you

1 can't deduct indirect costs unless you can tie it to that
2 specific contract. So it's an accounting gyration. So that's
3 another method. That's what we're looking at.

4 But we are nowhere close to that. You asked me a
5 minute ago. I got a call on Friday. I'm looking for documents
6 30 days after April 11th, which I thought was when you said the
7 subpoenas were to be given. That's what we talked about.
8 Athena has got nothing. I have got nothing until Friday I got
9 a call, Hey, I got some documents but I haven't opened them up
10 yet. Okay. Good. Thanks for calling. Monday can you come
11 over here and look at these documents? Well, I have got one
12 hearing and I will be right there. And I did.

13 And we went over maybe four or five sets. All right?
14 Example. I don't get a copy Monday. Carlos is there. I
15 finally get a copy late Monday afternoon when we go over and
16 get it. The very first one I get is Global Tel Link. In the
17 presentence report, it lists Global Tel Link at \$10 million.
18 It also should have CCI in there for 18 million. So the
19 question is if we are not going to use the bribe amount, what
20 part of that 18 million was direct, indirect or whatever?

21 Okay. You know all the documents supporting the
22 18 million? I get a copy of a protective order, not one
23 document. Not one. Nothing.

24 Okay. Let's go to the next one. Thanks, Darren. The
25 next one is Carter Global Link. I get a one-page affidavit

1 from somebody or declaration I believe he calls it. And again,
2 Carter Global Link is a \$6.2 million company. It's got some
3 numbers in there and it looks like it is about a million-dollar
4 net benefit. But the problem the Fifth Circuit says is you
5 have got to ascertain and I have got to be able to challenge
6 the methodology in arriving at this net benefit because it is
7 not clear in the guidelines.

8 So without the supporting documents for this stuff,
9 I'm shooting blind. And at 35 years of practice, I never have
10 been forced to cross-examine a witness who I have got nothing
11 to cross-examine on. Now, do I know that there is a company
12 called CCI? Yes. Do you know how many documents I got on CCI?
13 I got zero. Do I know there is a company called Admin Pros?
14 Yes. Do you know how many documents I got on Admin Pros?
15 Zero.

16 THE COURT: Now, slow down some.

17 MR. COLETTE: I'm sorry. Brenda is typing her fingers
18 off.

19 THE COURT: I don't want Brenda to attack you later.

20 MR. COLETTE: She's already getting close, Judge.
21 Thanks for saving me. ATS, I got no documents. \$3 million.
22 College Street Leasing, I got no documents. I mean I thought
23 the issue that we were here back in April was there was some
24 issue we didn't subpoena and we couldn't get them to comply and
25 you indicated you can resolve that problem, you can make them

1 come here. All right. But they can't come here on the morning
2 of the hearing and say, Well, we just got them and let Colette
3 cross-examine them. Judge, there is no way we can proceed
4 today with that.

5 Mississippi Correction Management, I got no documents.
6 Sentinel GS, I got no documents. On a couple of them, Wexford,
7 the big one, I have got a summary but I don't know how they
8 come up with it. In other words, this specific offense
9 characteristic drives basically the possible sentence. And
10 they want to just throw something up here with no support to --
11 and I have got to rely on some lawyer from Williams and Conley,
12 I think, that makes this determination of what they have
13 determined *Landers* says. And I have not had any time to look
14 at it. I have not had any time to examine these documents. And
15 I just don't think -- I don't think it's in compliance with
16 what you ordered having done on April 11th, and it is certainly
17 totally unfair to the defendant to attempt to cross-examine
18 witnesses about material either we just saw on the eve of this
19 hearing or that we haven't even gotten yet. It just can't
20 proceed this basis.

21 Now, obviously there is people here. There is a
22 couple, the protective order issues, maybe you can take that up
23 today, Judge. But I cannot go forward as I stated in my motion
24 for continuance based on this -- and again, another thing, I
25 think it was 2:00 yesterday we got a disc with maybe 400 pages.

1 Here is some more documents to look at before 9:30.

2 THE COURT: So how many pages of documents have you
3 received since Monday?

4 MR. COLETTE: There is 400 more in addition to this,
5 and I'm going to guess this is about a thousand or 2,000 pages.

6 THE COURT: Since Monday?

7 MR. COLETTE: Here is the kicker, too, Judge. I only
8 got stuff on seven or eight of the 15 corporations. And again,
9 you touched on the other point, and that was what we discussed
10 in April also was what about some of these people who are under
11 investigation who we know are under investigation. And now
12 they say, Well, you can cross-examine them but you can't ask
13 them about this or you can't ask them about that. If you're
14 going to do this net benefit calculation, then the contract has
15 to be somehow in return for the bribe. You just can't say that
16 Chris Epps and Cecil were good guys and they were buddies and
17 everything they did was wrong. That's not the law.

18 And again, going back, it is not a loss amount. It is
19 what was the net benefit of that contract and was there a
20 gratuity or a bribe tied to it? So it's another layer that we
21 will have to pin down, but we don't even get there until I can
22 at least see what they are shooting at. And I don't have a
23 summary. There is a reason probation does these reports,
24 Judge. You have been doing this longer than I have. I mean
25 Athena has nothing. I called her Friday: Hey, Athena, have

1 you gotten anything? I haven't got a thing. I asked her this
2 morning: Athena, did you get anything? No. We're just going
3 to wing it and you all figure it out. I can't proceed on that
4 basis, and I think it's patently unfair to my client, and I
5 just think it's not a way to run a railroad.

6 THE COURT: So then with regard to these witnesses,
7 were you provided their names?

8 MR. COLETTE: No. I have no idea. I have got a
9 couple of documents that has this person and that person. And
10 I talked to Darren about this Monday, Judge. I said, Look,
11 without the supporting -- and Carlos was there, too. Without
12 the supporting documents, I'm not sure that that witness is the
13 proper witness. If they bring me the CEO of the company and he
14 puts in, I have got drug testing court, I have got one page
15 basically. I got some bills back and forth, but I have got one
16 summary sheet. It shows the total value of revenue which
17 basically exceeded the contract. So they have got to explain
18 that. It's got cost of goods sold, and then it has payments
19 for consulting fees and/or investigative research.

20 So it comes out on a \$7 million contract, the net
21 benefit was 131,000. I says, Darren, I accept that; let's move
22 on. Well, wait a minute. I think we've got to add back in the
23 200,000 that Cecil got because it was a bribe. I said Cecil
24 didn't get bribed by DTC.

25 So the answer to your question, I don't know if these

1 are the right witnesses to put on. If they are talking about
2 putting them on for a foundation to introduce the documents, go
3 at it. But what I'm saying is I don't believe what they have
4 given us a gleaning picture of are the documents that we need,
5 nor do I think this person may or may not be the one who is the
6 proper witness for the purposes herein.

7 Again, I call the court's attention to this subpoena.
8 This is not really argument. It should be my argument should
9 be theirs, but the subpoena called for the profit loss
10 statement, the gross value, the direct cost and various
11 payments. All right. That's what it called for. And then I
12 got one-page summary. I didn't see a profit loss statement
13 from that corporation. I didn't see -- a couple of them they
14 did -- they did make me copies of contracts I already had. So
15 that really. helped. It had nothing to do -- I guess I'm
16 supposed to assimilate them and come up with some number.

17 But the issue is they have got the burden to prove net
18 benefit or to show this court what they believe to be net
19 benefit. Then they have the burden to prove that that benefit
20 for whatever that contract is attributable to Mr. Epps or maybe
21 he don't get that one and maybe Cecil does, and maybe Cecil
22 doesn't and gets another one.

23 So I think there is a lot of work that needs to be
24 done by the government, Your Honor. And as far as these
25 people, if -- I don't believe I'm making any objection as to

1 the foundation of the documents, but I have no supporting
2 documentation and I don't know how they were comprised. And
3 the methodology according to the Fifth Circuit has to be proven
4 and shown. And that's a de novo situation.

5 So unfortunately I think that had these subpoenas been
6 issued for May 9th and had they then had problems getting them,
7 we wouldn't be here where we are today. But having subpoenas
8 issued for June 9th at 9:30 and then piecemealing me a handful
9 of documents, I just can't be ready to cross-examine any
10 witness until I have had a chance to read them. Now, we have
11 gone through the little that we got, but again, it's the
12 supporting documentation that's lacking, and we have none of
13 that. And I don't know what they are going to do with the four
14 or five people that are unindicted that I know I will ask about
15 because it goes to the heart of the issue.

16 In other words, this was a -- the only reason you got
17 this contract, Mr. Jones, was because you and the commissioner
18 had a bribery scheme going. Right? Because if he says no,
19 then I take the position and the law supports me that amount is
20 not included. Well, how do you ask somebody who has a Fifth
21 Amendment right about that? Now, they say, Well, we can call a
22 corporate representative or whatever. But we are going to
23 definitely discuss how the relationship happened, but I think
24 that's further down.

25 Judge, I just think -- I think I'm entitled to have

1 all the documents and whatever summary and the names of the
2 witnesses so that I could then say I don't think that's the
3 proper witness or I need more additional information as to how
4 they -- what they attributed indirect or direct costs.

5 THE COURT: All right. Mr. Colette, let's see. Stay
6 at the podium, please. Let's see then if this course of action
7 might suffice. What if the government is allowed to call
8 witnesses as foundation witnesses only?

9 MR. COLETTE: To get the documents in.

10 THE COURT: To get the documents in, if possible.
11 Then the defense can cross-examine as to whether that witness
12 is the proper witness who will serve as a foundation witness.
13 Would you need the documents in toto in order for you to
14 conduct such a cross-examination?

15 MR. COLETTE: Yes, because I don't know what I would
16 be asking them. If someone were to come here now --

17 THE COURT: So then what you are saying is that even
18 as a matter concerning a predicate witness, at this point you
19 are not ready to go forward.

20 MR. COLETTE: No. And if it's just a predicate
21 witness, I'm not raising any issue as to admissibility of
22 whatever documents they provide. So they don't have to come
23 back. If all they are is a custodian witness and they are not
24 going to be able to tell me about how -- did you prepare this
25 summary, Mr. Witness? And if he or she says no, I don't need

1 that person anyway. I need the person who prepared the
2 document that they are putting in.

3 THE COURT: So you don't object to the government's
4 attempt to call predicate witnesses at this point and go no
5 further than simply maintaining testimony relative to the
6 admissibility of the documents, whatever they might be?

7 MR. COLETTE: The court's indulgence.

8 (SHORT PAUSE)

9 MR. COLETTE: Judge, I just don't think I'm adequately
10 prepared at this point. I don't know the names of the people.
11 I don't know what they are going to introduce. All I can tell
12 you is I have only had a couple little submissions. And these
13 people may be the right witness to examine about them. And so
14 if I reserve my right to cross on the competency of the
15 document, they have got to come back anyways. So I am not
16 prepared to do it from a foundation standpoint, and I don't
17 think they have got the proper documents. That's the other
18 problem.

19 THE COURT: All right. Next question.

20 MR. COLETTE: Yes, sir.

21 THE COURT: You have some documents.

22 MR. COLETTE: Yes, sir.

23 THE COURT: And you received some documents prior to
24 Monday?

25 MR. COLETTE: No.

1 THE COURT: You didn't?

2 MR. COLETTE: No, sir. The first hands-on documents,
3 we saw some documents in Darren's office Monday. The first
4 hands-on when Kevin went over there Tuesday. He said we got a
5 call saying there are some documents up front, come get them.
6 We ran down there immediately and got them. We brought them
7 back. There were like seven or eight out of the 15.

8 THE COURT: Seven or eight companies.

9 MR. COLETTE: Right. And the first company had no
10 documents, had a copy of a protective order. So now we are
11 down to six. And the next one was just the one declaration
12 sheet, some fellow. And the other ones -- the only one that
13 comes close to being useful to some degree would be Drug
14 Testing Corp. And that's a situation where they did a summary.
15 I don't know about the supporting documentation. We did have
16 some receipts, and they did show the cost of the cups. This
17 was the testing company. That may have some semblance of
18 usable information. That's the only one that I can see.

19 On Wexford, it was a 200 and some million dollar
20 contract, and I'm not sure -- they have a summary chart is all.
21 Not a supporting documentation one. I don't believe they have
22 provided any of the contracts. Again, the actual contracts we
23 should have. But on Wexford, I just had the -- \$286 million
24 contract and this is what I get. A copy of the subpoena.
25 That's two pages. And a summary chart and a letter from the

1 attorney. And from this chart I'm supposed to try to ascertain
2 what it means. And already two years that we pointed out
3 Monday are excludable, '07 and '15. My client wasn't there in
4 15. So that's what I get. I have no support for \$280 million.

5 And yet the subpoena -- understand the subpoena that
6 Wexford got says the profit and loss statement, the gross value
7 of the contract, the direct costs and all payments or contracts
8 or products worked with Cecil. Now, they did attempt to comply
9 with that, and he indicated that, By the way, the monthly
10 consulting payment to Mr. McCrory is included in the other
11 miscellaneous costs, other on the cost entry line. And from
12 this, I can just -- I'm just guessing the amount.

13 Now if they wanted to put whoever prepared this on,
14 this summary, if they in fact prepared it and put these numbers
15 in there, but I still need all of the supporting documents,
16 Judge. Take their word for it they did it properly? I can't
17 do that.

18 THE COURT: So you are telling me then that with
19 regard to these 15 companies that you are not prepared to go
20 forward on any of them?

21 MR. COLETTE: No, sir.

22 THE COURT: Okay. Thank you. Now, let me hear from
23 the other defendants.

24 MR. BAIN: Your Honor, thank you. And on behalf of
25 Sam Waggoner, we're really here in kind of a peripheral limited

1 role, I guess. But as to the documents, we haven't received
2 anything, not the first document that would go as to his case.
3 I understand I may not be privy to those with Mr. Epps and
4 Mr. McCrory, but as to Waggoner, we haven't received the
5 absolute first document. All we got was a subpoena for CCI
6 which was the company that Mr. Waggoner was an officer of
7 asking for documents, asking for him to provide documents, in
8 which I know the court may be aware, may not be, which we filed
9 a motion for more time to respond to that.

10 THE COURT: All right. Thank you very much. And Mr.
11 Tanner?

12 MR. TANNER: No, Your Honor. I basically join in with
13 Mr. Colette's argument.

14 THE COURT: All right. Thank you. Government's
15 response. Essentially how can the defense be expected to go
16 forward today on cross-examining witnesses and documents?

17 MR. LAMARCA: Very simply. The same way the
18 government intends to go forward, Your Honor, by taking the
19 production, as an example, what Mr. Colette mentioned with
20 regard to Wexford, taking that production, having the witness
21 take the stand, asking questions: Did you go back through your
22 records, determine what the gross value, the gross revenue for
23 that contract was? Yes. What was it? Did you prepare a
24 spreadsheet? Yes. What amount? They tell me the amount, we
25 look at the year, and there it is.

THE COURT: Now, how does the defense verify that?

2 MR. LAMARCA: Your Honor, the defense can subpoena
3 every document that they want from any company they desire to
4 say whether an individual who in this instance, a pharmacy
5 bill -- in this case, let's look at 2009 pharmacy expenses of
6 \$7 million right above the mark there. \$7 million. The
7 defense, if they want to determine whether all of that
8 \$7 million worth of expenses related to this particular
9 facility, they can make that happen. They can go subpoena
10 every bill that amounts to \$7 million to determine whether that
11 \$7 million record is accurate. These are business records, a
12 compilation of a business record.

16 MR. LAMARCA: I produced this document right here.
17 This is what I received in compliance with a subpoena that
18 sent, Your Honor.

19 THE COURT: So you are saying that you submitted to
20 them a summary of this information?

21 MR. LAMARCA: I submitted to them the summary that I
22 received from the company that was subpoenaed, and this is what
23 was provided to me.

24 THE COURT: So how can the defense cross-examine a
25 summary?

1 MR. LAMARCA: The defense can ask the questions about
2 how this summary came to be?

3 THE COURT: And how can they impeach?

4 MR. LAMARCA: They can only impeach if they go get the
5 records that they believe may or may not be responsive to the
6 questions that were asked.

7 THE COURT: In your estimation, was the government
8 required to provide that information?

9 MR. LAMARCA: No, sir.

10 THE COURT: Why not?

11 MR. LAMARCA: The government is required to go forward
12 to arrive at net benefit. We have subpoenaed these particular
13 entities requesting just that and the profit and loss or an
14 itemization. As an example, this was an attachment to a
15 different subpoena, but it requested the same information.
16 This is what was requested of each company. This, in
17 compliance with *Landers*, is what we requested. Once we
18 received those this past week and last Friday, we turned them
19 over to the defense counsel, Your Honor.

20 THE COURT: So these volumes of papers that have been
21 shown to me, those papers add up to more than just summaries.
22 Do they not?

23 MR. LAMARCA: In some instances, they are all the
24 contracts.

25 THE COURT: So now how then did you make a

1 determination of when you should submit the contracts and not
2 submit contracts?

3 MR. LAMARCA: When I submit to the defense?

4 THE COURT: Submit or not submit contracts. You said
5 some of the information you submitted on Monday constituted
6 contracts?

7 MR. LAMARCA: Well, contained the contracts. I
8 submitted everything we received from the corporate entities in
9 compliance with the subpoena that was issued. Some corporate
10 entities did not send me the contracts.

11 THE COURT: And how then could the defense
12 cross-examine on that?

13 MR. LAMARCA: On that particular person as to the
14 contract, they may not be able to, Your Honor, as to the actual
15 contract.

16 THE COURT: And then with regard to the numbers that
17 have been supplied pursuant to these summaries, how does the
18 defense cross-examine that?

19 MR. LAMARCA: Again, by asking them questions as to
20 how those summaries or that compilation was made. Based upon
21 what records? Records of the company. In Wexford's case, the
22 witness will testify these were the records of the company.

23 THE COURT: And where are those records?

24 MR. LAMARCA: Those records are maintained within the
25 company as business records, Your Honor.

1 THE COURT: So then the defense would not have those
2 today?

3 MR. LAMARCA: No, sir, they would not. If they wanted
4 those, they could subpoena those, Your Honor.

5 THE COURT: Well then would they have known what they
6 needed if they hadn't had a chance to review all of this?

7 MR. LAMARCA: They could have. They certainly could
8 have with any foresight and said, *I want all the supporting*
9 *documentations.* They were aware of what we were asking the
10 defense for, which is the *Landers* case. They could issue
11 subpoenas to get all these records if they so desire. Our
12 purposes here today -- our efforts today were strictly to
13 present to the court in a hearing for a guideline calculation
14 what those direct costs and what the net benefit of the
15 contracts were.

16 THE COURT: All right.

17 MR. LAMARCA: That's what we asked the companies to
18 supply us with.

19 THE COURT: At the last hearing when I said that I
20 wanted this information provided to them timely so that they
21 could study it and be prepared to go forward, did I not
22 indicate that I would like for them to have two or three weeks
23 to do so?

24 MR. LAMARCA: I don't remember the time, but I can
25 tell you that you did ask that they -- or you did say that you

1 would like them to have them sufficiently ahead of time. I
2 acknowledge that, Your Honor.

3 THE COURT: Would you consider providing information
4 to them Monday sufficiently ahead of time?

5 MR. LAMARCA: I think sufficiently ahead of time for
6 them to examine the particular witnesses who are here today on
7 these documents, yes, Your Honor. I think they can do the same
8 examination that I can do, and if they want additional
9 information, additional information, they can subpoena that
10 additional information for another hearing.

11 THE COURT: And then do the hearing all over again.

12 MR. LAMARCA: Well, it won't be all over, but it would
13 be as to the supporting documentation.

14 THE COURT: Well, what if they want to ask pinpoint
15 questions about information they find within the documentation?
16 Then they might have to have a hearing later on to try and do
17 that.

18 MR. LAMARCA: Yes, sir. I agree.

19 THE COURT: So then we would be wasting our time
20 today.

21 MR. LAMARCA: I don't think we are wasting our time,
22 Your Honor, with these people who have flown here today to
23 testify as to how these figures came about. They are the
24 comptrollers in some instances, in some instances the
25 bookkeepers who are here to testify that we went through our

1 records and these are the totals that pertain to advertising,
2 that pertains to transportation, in compliance with these
3 contracts that we have with M.D.O.C. They can testify to that.

4 Now, if Mr. Colette does not believe and wants to do
5 an audit of the company, I don't think the case law requires an
6 audit to be done of each individual contract; it requires the
7 court to come to a reasonable estimation of the net benefit of
8 these contracts. The government, having subpoenaed these
9 witnesses, having brought them here, is ready to go forward to
10 show the court what the net benefit of these contracts were to
11 these particular companies for the court to then arrive at its
12 decision in July -- I think it's July 19th as to the
13 appropriate guideline range.

14 In the meantime, if the defendant believes that these
15 numbers are hocus pocus or that they are just thought up out of
16 thin air, then the defense can subpoena what records they wish
17 to contest these figures that we intend to present today, Your
18 Honor. I don't think it's a waste of time.

19 THE COURT: Tell me how many pages of documents you
20 produced to the defense on Monday.

21 MR. LAMARCA: On Monday, it would have to be an
22 estimate, Your Honor. I would say with the contracts included,
23 4 or 500 pages.

24 THE COURT: 4 or 500?

25 MR. LAMARCA: Yes, sir.

1 THE COURT: I thought Mr. Colette gave a different
2 number.

3 MR. COLETTE: On Monday, but then --

4 THE COURT REPORTER: I'm sorry. Can you get on the
5 microphone?

6 MR. LAMARCA: Tuesday.

7 MR. COLETTE: We didn't get the documents actually
8 picked up or told to pick them up until Tuesday. And he is
9 saying it's 4 or 500. I will accept that. I think on
10 yesterday is when we got another 4 or 500 from just one other
11 entity that was delivered directly to our office. Another 4 or
12 500. So there is a thousand or so documents. Mr. Epps and I
13 tried to go over them yesterday morning, at least the initial
14 submission. And then again, like I said, that's what we have.
15 So that's all we've got that represents \$800 million.

16 THE COURT: Did you meet with the defense prior to
17 this morning?

18 MR. LAMARCA: I met with them Monday.

19 THE COURT: Monday?

20 MR. LAMARCA: Yes, sir.

21 THE COURT: Now, during that meeting did you inquire
22 as to whether they were prepared to go forward?

23 MR. LAMARCA: Yes, sir. Mr. Colette said he could not
24 go forward, that he was willing to file a motion to continue.
25 Willing. Was going to do so. The government at that time said

1 we wouldn't object to that. I even spoke to Mr. Colette that
2 evening or at least we corresponded Monday evening saying I
3 wouldn't object to a two-week continuance to give you the time
4 to do it. And that's where it remained as of Monday evening.
5 And then late yesterday afternoon or day before yesterday, I
6 don't remember, I think it was the day before yesterday, Mr.
7 Colette did file his motion.

8 I had mentioned to Mr. Colette that I needed an order
9 of the court if we were going to have one, a continuance,
10 before -- or at least an order as of Tuesday so on Wednesday
11 the government would not go through the expense of flying
12 people down to testify. Of course, with it just being filed
13 Tuesday afternoon, the order or any consideration of that
14 motion it appeared to the government was not going to occur
15 until this morning. So out of an abundance of caution, we flew
16 everyone down with the expectation that we would need them or
17 with the caveat that we very well may need them, and if we do,
18 we needed to have them here. So we have them, the witnesses
19 and corporate counsel, who are present, Your Honor.

20 THE COURT: Who is your clearest witness?

21 MR. LAMARCA: We have several.

22 THE COURT: Name me one who if that person testified
23 should be able to provide the clearest testimony.

24 MR. LAMARCA: Your Honor, a representative from Keefe
25 Centric Company doing business as Keefe.

1 THE COURT: And what type of business is this?

2 MR. LAMARCA: It's a commissary business.

3 THE COURT: And how much is the contract price there,
4 the gross amount?

5 MR. COLETTE: In the presentence report, Your Honor --

6 MR. LAMARCA: I'm sorry, Your Honor. I don't mind
7 answering your question if it was directed at me.

8 THE COURT: All right. Go ahead.

9 MR. LAMARCA: Thank you.

10 THE COURT: Go ahead. You can answer the question.

11 MR. LAMARCA: The testimony would be \$54,461,955.

12 THE COURT: All right. 54 million what?

13 MR. LAMARCA: \$54,461,955. These are accurate figures
14 from Keefe, not the -- what was -- may or may not have been on
15 the face value of the contract, but this is the actual revenue
16 to be expressly and as explicit as possible so that the court
17 can have the most accurate information it can in determining
18 this guideline range.

19 THE COURT: Now, has the documentary information been
20 submitted to the defense?

21 MR. LAMARCA: Yes.

22 THE COURT: What has been submitted? One second, Mr.
23 Colette. What has been submitted to the defense?

24 MR. LAMARCA: We submitted this set of documents to
25 the defense, which includes --

1 THE COURT: All right. You are holding up a group of
2 papers, and that would total approximately how many?

3 MR. LAMARCA: 37 pages. We had to supplement because
4 the Excel spreadsheets that were sent did not print because it
5 was in native format, and so we ended up sending those
6 separately by e-mail to the defense.

7 THE COURT: All right. And when did you send those to
8 the defense?

9 MR. LAMARCA: I believe it was two days ago, the Excel
10 spreadsheets.

11 THE COURT: Let me see those documents, please. Pass
12 them over.

13 MR. COLETTE: Judge, can I add --

14 THE COURT: One second. I will come to you.

15 MR. LAMARCA: I'm looking for the Excel spreadsheets
16 to make sure that they are in this particular packet, Your
17 Honor.

18 (SHORT PAUSE)

19 MR. LAMARCA: Your Honor, what I'm about to present to
20 the court is a particular set of documents that counsel for
21 Centric is requesting a protective order and would like to be
22 heard on that, but I don't believe there would be any concern,
23 of course, with the court seeing these particular documents.

24 THE COURT: Well, now, I thought you were going to
25 call somebody from -- what organization did you name?

1 MR. LAMARCA: Centric doing business as Keefe.

2 THE COURT: But they are asking for a protective
3 order?

4 MR. LAMARCA: They are. The court would have to
5 address that issue before it's presented.

6 THE COURT: Well, then let's take up some company
7 which is not seeking a protective order. And show me then what
8 you have submitted to the defense and how many documents are
9 involved.

10 Now, counsel, you said that there are 34 documents or
11 34 pages in this set of documents you provided to the defense,
12 but in this notebook that you just took off or file that you
13 just took off the podium, it seems to contain far more than 34
14 pages.

15 MR. LAMARCA: It did, Your Honor.

16 THE COURT: So then are those additional documents?

17 MR. LAMARCA: Not from the company. Those are
18 documents of the defendants -- if the court is inquiring, I
19 will tell the court. Memorandums of interviews with Mr. Epps,
20 with Mr. McCrory, so that we can be prepared for the court to
21 address any issue that the defense has that these contracts are
22 not pertinent to the indictment of Mr. Epps. So we have that
23 in there, not for the defense but for questioning of the
24 witness, not this witness, but of the FBI agent as I mentioned
25 to the court earlier, the protocol that we had intended to

1 take. So there were a number of documents in that folder as to
2 that, Your Honor.

3 In addition, in that folder were several copies, sets
4 of the documents that we had submitted. So what you have seen
5 included three sets of the same documents that were sent as
6 well as reports that were given or taken by the FBI of
7 interviews with various entities, most particularly the
8 defendants themselves.

9 THE COURT: All right. So have you identified or
10 located a company whose representative is here and you are
11 prepared to tell me what have you submitted to the defense?

12 MR. LAMARCA: Yes, Your Honor.

13 THE COURT: Okay. What do you have?

14 MR. LAMARCA: One of the companies is GEO Group.

15 THE COURT: GEO Group. What kind of company is that?

16 MR. LAMARCA: GEO maintained services -- management
17 services of various facilities -- prison facilities in the
18 State of Mississippi, Your Honor.

19 THE COURT: And how much money are we talking about
20 there? Gross amount.

21 MR. LAMARCA: 148,983,914.

22 THE COURT: Okay. Over what period of time?

23 MR. LAMARCA: That would be from the date that the
24 consulting agreement was entered between GEO and Investigative
25 Research, a company owned by Mr. McCrory, and that would be

1 from 8-1 of 2008 through 2012. And we anticipate that that
2 figure I gave the court would be the figure testified to by the
3 witness present.

4 THE COURT: \$148,983,914?

5 MR. LAMARCA: Yes, Your Honor.

6 THE COURT: And the representative who would be the
7 sponsor of those documents would be what person?

8 MR. LAMARCA: John Tyrrell.

9 THE COURT: And his position?

10 MR. LAMARCA: Your Honor, I know he is in the
11 financial department. I can't tell the court specifically
12 right now whether he is the comptroller or the chief operating
13 officer.

14 THE COURT: And what quantum of documents do you
15 propose to give to the defense concerning this entity, GEO
16 Group?

17 MR. LAMARCA: The same set of documents that we have
18 already disclosed to the defense.

19 THE COURT: And how many pages is that?

20 MR. LAMARCA: Your Honor, these documents were not
21 Bates stamped when received nor when delivered. I would say it
22 comprises roughly three quarters of an inch thick.

23 THE COURT: But you don't know how many pages?

24 MR. LAMARCA: I don't know specifically the number of
25 pages, Your Honor. I can count them if the court wishes.

1 THE COURT: Just do a quick count.

2 (SHORT PAUSE)

3 MR. LAMARCA: Roughly 236.

4 THE COURT: And when were these 236 pages delivered to
5 the defense?

6 MR. LAMARCA: We believe they were sent on Tuesday,
7 Your Honor.

8 THE COURT: What time?

9 MR. LAMARCA: It would have been 1:00, 2:00, Tuesday,
10 p.m.

11 THE COURT: All right. And let me see a copy of that
12 set.

13 (DOCUMENTS TENDERED TO COURT)

14 THE COURT: Who is Investigative Research?

15 MR. LAMARCA: It would be a company owned by
16 Mr. McCrory.

17 THE COURT: Now, what involvement, if any, are you
18 contending that Mr. Epps has in this matter?

19 MR. LAMARCA: Mr. Epps influenced the contract to be
20 sent to or to -- for M.D.O.C. to enter into the agreement with
21 GEO for these services. And during that same period of time,
22 he recommended that Investigative Research be the consultant
23 for GEO in the State of Mississippi. As a remuneration for
24 that consulting services, GEO paid Investigative Research and
25 Investigative Research then cut checks back to Mr. Epps out of

1 that consulting agreement.

2 THE COURT: Are you contending that Mr. McCrory had
3 anything to do with this contract?

4 MR. LAMARCA: I am contending that Mr. McCrory was a
5 direct beneficiary of that contract and that it was part of the
6 scheme that Mr. McCrory would receive consulting fees, in this
7 case, in the total amount of \$344,000 and out of which money
8 was kickbacked to Mr. Epps as a result of the windfall, if you
9 might, that Mr. McCrory received as the consultant for GEO.

10 And so money was kicked back to Mr. Epps from Mr. McCrory.

11 THE COURT: What about Mr. Waggoner? Are you
12 contending that he is involved in this contract?

13 MR. LAMARCA: No, Your Honor.

14 THE COURT: So then these documents you have submitted
15 to me here pertain only to allegedly Mr. McCrory and Mr. Epps?

16 MR. LAMARCA: Correct, Your Honor.

17 THE COURT: What you have submitted to me are mostly
18 contracts and some checks that were written to -- some to Cecil
19 McCrory and others to the Investigative -- let me see what the
20 name of it was. Investigative Research, Inc. Is that correct?

21 MR. LAMARCA: Yes, Your Honor.

22 THE COURT: Were there any other checks included in
23 here that were written to any other entities other than to
24 those two?

25 MR. LAMARCA: Not in response to the subpoena that was

1 issued to GEO.

2 THE COURT: Was there a summary sheet of how much
3 money was produced as a result of these contracts?

4 MR. LAMARCA: Yes, Your Honor.

5 THE COURT: Where is it?

6 MR. LAMARCA: About two-thirds of the way through.
7 You will see a spreadsheet.

8 THE COURT: Okay. I see the spreadsheet. Now, this
9 spreadsheet, does it -- is it headed, *Marshall County*, at the
10 top?

11 MR. LAMARCA: Yes, Your Honor.

12 THE COURT: And then does it have the years 2007,
13 2008, '9, '10, '11 and '12?

14 MR. LAMARCA: Yes, Your Honor.

15 THE COURT: And then under there is East Mississippi?

16 MR. LAMARCA: Yes.

17 THE COURT: And then Walnut Grove?

18 MR. LAMARCA: Yes, sir.

19 THE COURT: Then on the last page it has total revenue
20 for these three entities, Marshall County, East Mississippi,
21 Walnut Grove, of \$188,445,628?

22 MR. LAMARCA: That's correct. Yes, Your Honor.

23 THE COURT: What was the figure you gave me earlier?

24 MR. LAMARCA: I gave you a figure of 148 --

25 THE COURT: 983, 914.

1 MR. LAMARCA: That's correct.

4 MR. LAMARCA: Right. And the reason for the
5 difference between those two is what you see before you on the
6 spreadsheet includes figures from 2007 through 2012. The
7 government -- which we requested. The government's contention
8 and the government's evidence would be that Mr. McCrory's
9 contract as a consultant for GEO began August 1 of 2008. So
10 the government did not include the 2007 annual figures, nor did
11 it include seven months of the figures for 2008. So we took
12 5/12ths of 2008 and then added that to '9, '10, '11 and '12 to
13 come to the figure of 148,983,914.

14 MR. TANNER: Your Honor, may I ask a question, please,
15 of the court?

16 THE COURT: What's your question?

17 MR. TANNER: Just in case the court is going to
18 require me or permit this to go forward today and require me to
19 cross-examine these folks, at every step of this process, the
20 government has alleged that this was a *but for* arrangement,
21 that *but for* the hiring of Mr. McCrory and the payment of
22 kickbacks. I think they just addressed this matter that these
23 contracts started over a year before Mr. McCrory was ever
24 brought into the picture. Am I going to get an opportunity to
25 ask them how could there be a *but for* if the contract preceded

1 or predated Mr. McCrory joining the group?

2 THE COURT: We will see what we get to as we go
3 through these matters today. Now, what I'm going to do here is
4 allow the defense to make their record as to why they can't go
5 forward through the examination of this John Tyrrell. So then
6 call John Tyrrell. And I might have some questions for John
7 Tyrrell myself. So call that person and let me see what he has
8 to offer on this matter.

9 MR. LAMARCA: All right. We do call John Tyrrell.

10 THE COURT: All right. Where is he? Is the rule
11 being invoked?

12 MR. TANNER: Yes, Your Honor.

13 THE COURT: Then all persons expected to be witnesses
14 today are directed to wait outside the courtroom until called
15 as witnesses. Counsel are directed to assist the court in
16 maintaining a courtroom free of anticipated witnesses.

17 (SHORT PAUSE)

18 THE COURT: Swear the witness.

19 **JOHN TYRRELL,**

20 having first been duly sworn, testified as follows:

21 **DIRECT EXAMINATION**

22 BY MR. LAMARCA:

23 Q Mr. Tyrrell, if you would, introduce yourself to the court.
24 Tell the court what your position is with GEO, please.

25 A Good morning. My name is John Tyrrell. I'm the director

1 of finance at our corporate office in Boca Raton, Florida.

2 THE COURT: I need you to pull that microphone closer
3 to you, please. All right. Repeat your answers.

4 A My name is John Tyrrell, and I'm the director of finance at
5 our corporate office in Boca Raton.

6 BY MR. LAMARCA:

7 Q And you are director of finance for GEO. Is that correct?
8 GEO Group?

9 A Yes.

10 Q And GEO Group is in what kind of business?

11 A Basically we are an owner and operator of correctional
12 facilities. We offer additional services through electronic
13 monitoring and data reporting, reentry centers and basically
14 it's in the criminal justice area.

15 Q All right. And in your position as director of finance,
16 you are responsible for what?

17 A My primary responsibilities are financial planning and
18 analysis relating to our budgeting and forecasting processes
19 and also our treasury and cash management.

20 Q I'm sorry. The last part again?

21 A Treasure and cash management.

22 Q All right. And were you asked to respond to a subpoena
23 that had been issued by the government in this case?

24 A Yes, I was.

25 Q All right. And did you submit through your attorney a set

1 of documents in response to that?

2 A Yes. The majority of the documents by volume was prepared
3 through our accounts payable department by pulling invoices and
4 checks. The financial summaries were prepared by myself.

5 Q All right.

6 THE COURT: Counsel, GEO Group, is GEO Group in any
7 way a target here?

8 MR. LAMARCA: They are not.

9 THE COURT: Counsel -- the witness mentioned having a
10 lawyer.

11 MR. LAMARCA: That's correct.

12 THE COURT: All right. Is that counsel present with
13 you?

14 THE WITNESS: No, he is not.

15 THE COURT: So then back to the prosecution. GEO
16 Group is not a target in any way?

17 MR. LAMARCA: They are not.

18 THE COURT: Okay. Then go ahead and proceed.

19 MR. TANNER: Your Honor, some of my questions may
20 implicate criminal activity on the part of GEO. He needs to be
21 either warned that those may be coming -- and I think they
22 relate to the financial aspects of this testimony, because the
23 whole premise here again is that but for bribes and kickbacks,
24 GEO wouldn't have gotten these contracts. So I'm entitled
25 to -- part of the problem I have noticed is that sometimes

1 we're assuming the predicate here. We're assuming the *but for*,
2 so we are only talking about numbers. But to the extent that
3 what we are trying to determine is the net benefit derived from
4 a bribe, then I'm entitled I think or I ask the court that I'm
5 entitled to ask him, you know, what did and did not derive from
6 bribes, the extent of GEO's knowledge concerning how these
7 numbers got on these pieces of paper and in his accounting
8 documents. So to the extent that this man may not be able to
9 answer questions related to that and to the extent that if he
10 is, then my questions may implicate him or his company rather
11 in criminal activity, I think he needs to be apprized of that.

12 THE COURT: Have you discussed this matter with the
13 prosecution?

14 MR. TANNER: No, Your Honor, only because I have never
15 heard of this man until he just said his name.

16 THE COURT: And what about this company?

17 MR. TANNER: Concerning GEO?

18 THE COURT: That's correct.

19 MR. TANNER: No, Your Honor. When you say what
20 matter?

21 THE COURT: I'm saying have you discussed with the
22 prosecution your potential theory that GEO Group is criminally
23 involved in this matter?

24 MR. TANNER: Well, no, Your Honor, except I would say
25 that has been the government's position that there is a *but*

1 for. I guess if you break down what the government's theory
2 is, that GEO Group paid Cecil McCrory -- it would have to be
3 work he didn't do. Right? Because they paid him a sum in
4 order to get a contract. I find it difficult to believe that
5 they could pay him -- I would imagine this man is not going to
6 say that GEO paid Mr. McCrory for work that he didn't do.
7 Right? So what I'm saying is GEO -- the only way the
8 government's theory holds water is if GEO knew that there was a
9 bribe here. Otherwise, there is no *but for*, and this whole
10 notion of these big contract values has nothing to do with
11 anything that this court could derive for a net benefit
12 analysis because the underlying premise is false.

13 THE COURT: All right. Thank you. Let me go back to
14 the prosecution.

15 MR. LAMARCA: Yes, Your Honor.

16 THE COURT: So then are you familiar with the
17 defense's theory on this?

18 MR. LAMARCA: I am, Your Honor.

19 THE COURT: And being aware of defense's theory at
20 this juncture, do you anticipate filing any charges against GEO
21 Group?

22 MR. LAMARCA: We do not at this time, Your Honor. We
23 have nothing at this point that would be actionable.

24 THE COURT: Well, then at this point do you feel that
25 GEO ought to be given its Miranda warnings?

1 MR. LAMARCA: If GEO -- if this witness -- I could say
2 it this way, Your Honor. I think out of an abundance of
3 caution, every witness that takes the stand in any case would
4 be given the Miranda warnings if they were to possibly say
5 something that could incriminate themselves.

6 THE COURT: But the court doesn't ordinarily do that
7 with each and every witness who testifies. The court does that
8 when it comes to the court's attention that a witness may be a
9 potential target.

10 Now, according to Mr. Tanner, he is saying that GEO
11 Group might or should be in his estimation -- well, he is not
12 saying should be yet, but he wants to explore the possibility
13 whether GEO Group should be a target.

14 MR. LAMARCA: Under -- with this defendant -- I'm
15 sorry. With this witness who is testifying, Your Honor, this
16 witness is testifying on behalf of the company in the
17 production of the financial figures on behalf of the company.
18 The company, as the court is well aware, is not and does not
19 have a Fifth Amendment right against self incrimination.

20 THE COURT: But individuals do associate with the
21 company. And are you calling this witness here as a
22 spokesperson for the company?

23 MR. LAMARCA: I am calling him as a spokesperson for
24 the company with regard to the production made in reply to our
25 subpoena.

THE COURT: Well, then let's see if you can limit your questions to that, then, because I said I would allow the defense to make a record with regard to the documents. So at this point then you can ask about the production of the documents and the other side may question whether there are other such documents available and what would be needed to interpret these documents and what would be needed in order to challenge these documents if necessary.

MR. LAMARCA: Yes, Your Honor.

THE COURT: And so let's just limit the testimony to that.

MR. LAMARCA: Certainly I intended to do so.

THE COURT: All right. Go ahead.

MR. LAMARCA: Thank you. May I approach the witness,
Your Honor?

THE COURT: You may. Show the other side what you are giving him.

(SHORT PAUSE)

THE COURT: Mr. LaMarca, you provided this to me. It has a government exhibit sticker on it. Do you prefer to have this one back?

MR. LAMARCA: I do.

THE COURT: Okay. Why don't you substitute them.

(SHORT PAUSE)

BY MR. LAMARCA:

1 Q (Tenders document.)

2 A Thank you.

3 THE COURT: Did you put a number on there?

4 MR. LAMARCA: I did, Your Honor. It's Government's
5 Exhibit 1.

6 THE COURT: All right. Government's Exhibit 1 is
7 marked only for identification at this point. All right.
8 Proceed.

9 BY MR. LAMARCA:

10 Q All right. Back to my questions, Mr. Tyrrell. As director
11 of finance, you were tasked as you have mentioned with the
12 responsibility of pulling together numbers pursuant or unique
13 to the contracts entered with the Mississippi Department of
14 Corrections as it pertains to the management of the facilities
15 at East Mississippi Correctional Facility, Walnut Grove
16 Correctional Facility and Marshall County. Is that correct?

17 A Yes.

18 Q All right. If you would, in the documents that you have
19 before you, in your efforts, you compiled, did you not, a
20 spreadsheet of the total revenue generated unique to each of
21 those three entities. Is that right?

22 A Yes.

23 Q And that would be Marshall County, East Mississippi and
24 Walnut Grove?

25 A Yes.

1 Q And that appears within the set of documents of G-1 that
2 you have before you. Correct?

3 A Yes.

4 Q And the remainder of those documents within G-1 were
5 produced in compliance with a subpoena, but you had no
6 involvement in that. Is that right?

7 A No direct involvement in pulling them, submitting those
8 documents.

9 Q In those particular documents?

10 A Yes, the checks, the invoices and the consulting agreement
11 copies.

12 Q Your responsibility was the spreadsheet. Is that right?

13 A Yes.

14 Q Okay. And in compiling the spreadsheet that we have before
15 us, how did you go about doing that?

16 A As a company, we do -- basically we track our facility
17 performance on an individual basis so every facility has a
18 profit and loss statement by month. So using our financial
19 system, I was able to run detailed P&Ls for all three of these
20 facilities for the years that were covered under the subpoena,
21 and then those were summarized into this document here.

22 Q All right. And where did you -- where did you go to get
23 these numbers?

24 A I mean the system is called Hyperion. That's what we use
25 for our financial reporting. It's an Oracle product. It's one

1 of our IT systems.

2 Q And within that IT system, entries are made with regard to
3 expenses and attributed to a particular facility or a
4 particular contract?

5 A Yes. That's where all of our financial records get
6 consolidated, our revenue, payroll, accounts payable. All of
7 our financial records get consolidated into that one system to
8 produce our financial statements. In addition to the
9 individual facility P&Ls, we also do a consolidated public
10 financials out of the same system.

11 Q So you can execute a query to gather what information you
12 desire out of that system. Is that fair?

13 A Yes, that's fair.

14 Q All right. And did you do that with regard to Marshall
15 County and East Mississippi and Walnut Grove?

16 A I don't know if I would call it a query. We have basically
17 a formatted report, so I just run a facility P&L and the report
18 comes out. I define the year and period that I want to run,
19 and it produces the report by extracting the data from the
20 database.

21 Q And that report that's produced is based upon entries made
22 into the system and coded in particular ways for certain
23 expenses and/or revenue. Is that right?

24 A Yes.

25 Q Okay. And the company relies on that information. Does it

1 not?

2 A Yes.

3 Q And that's ordinary course of business of the company. Is
4 that true?

5 A Yes.

6 Q All right. And you, as director of finance, on behalf of
7 the company to determine profitability, whether things are
8 going well or not, review these documents periodically?

9 A Yes.

10 Q Or the information contained within your system?

11 A Yes.

12 Q And you took that information and you came to the
13 conclusions from, say, Marshall County, the top of that
14 particular spreadsheet page that we are talking about
15 showing --

16 MR. TANNER: Objection if he is about to ask about the
17 specific numbers. We are not there yet, Your Honor, I don't
18 believe.

19 THE COURT: I'm going to let him go ahead and provide
20 the number.

21 BY MR. LAMARCA:

22 Q Showing revenue for each particular year attributable to
23 that facility. Is that right?

24 A Yes.

25 Q And you took that because of the revenue or as shown to you

1 based upon the business records of the company. Is that right?

2 A Yes.

3 MR. COLETTE: Your Honor, I'm going to raise the
4 objection that he is testifying about a summary, and I think
5 Rule 1001 he has got to have the documents present for us to
6 verify that these numbers are accurate, and we don't have
7 those. I object on that basis for the record.

8 THE COURT: The record reflects your 1001 objection.
9 Now, we will come back to it later. Now, go ahead, Mr.
10 LaMarca.

11 MR. LAMARCA: Thank you.

12 BY MR. LAMARCA:

13 Q With regard to specifically you were requested to produce
14 from 2007 to 2012. Correct?

15 A Yes.

16 Q Without regard to why. Correct? Why you should or should
17 not?

18 A Yes.

19 Q In other words, you were trying to comply with the
20 financial aspect of the subpoena that was issued to your
21 company. Right?

22 A Yes.

23 Q Okay. And in 2008, you show a revenue of 11,375,687 for
24 Marshall County. Correct?

25 A Yes.

1 Q And tell the court how you came to that particular revenue
2 figure for that facility.

3 A The Marshall County facility was a per diem based revenue
4 which means we get paid a certain amount per inmate per day
5 that they reside in the facility. So each month a billing is
6 prepared to the client that takes the daily population,
7 multiplies that by the per diem to derive a daily revenue which
8 is compiled into the monthly billing.

9 Q And that's the total for 2008. Is that correct?

10 A Yes. That's a total for the 12 months.

11 Q For that particular --

12 A For 2008.

13 Q For that particular facility?

14 A Yes.

15 Q And you did a similar analysis for 2009, '10, '11 and '12
16 for Marshall County as represented by the numbers on your
17 spreadsheet in G-1. Is that right?

18 A Yes. Our processes related to revenue have been unchanged
19 during this period of time, so they are all compiled the same
20 way.

21 Q Okay. Now, with regard to the costs and expenses
22 thereunder, do you see the itemization that you have? Let's
23 look at 2008 particularly.

24 MR. COLETTE: Your Honor, can we have a continuing
25 objection to all of this? And I want to correct myself. It's

1 1006 is my argument on the rules of evidence. 1001 just got me
2 in the ballpark, but 1006 says they have got to make the
3 originals available for examination prior to this. Thank you.

4 THE COURT: All right. We will continue. Go ahead.

5 BY MR. LAMARCA:

6 Q So with regard to labor and related costs, tell us what
7 comprises that figure of 6,760,236.

8 A That consists of virtually all employee-related expenses,
9 including just gross wages, overtime, benefit-related costs for
10 medical, dental, any other employee benefits paid by the
11 company. It also includes payroll taxes, FICA, Medicare, state
12 unemployment insurance. Basically it's all of the
13 personnel-related expenses.

14 Q Okay. And how did you compile those expenses to get to
15 6,760,000?

16 A It's the sum of the categories of expenses from the
17 detailed report.

18 Q And that sum was from the detailed report being the report
19 of all the expenses in the category of labor-related costs. Is
20 that right?

21 A Yes.

22 Q In your computer system?

23 A Yes.

24 Q Which is maintained in the ordinary course of business in
25 your system. Right?

1 A Yes.

2 Q And with regard to utilities, can you explain the \$960,000
3 figure?

4 A It consists of basically all of the roll-up of the utility
5 costs which would include electric, gas, water, sewer,
6 communications cost, telephone, internet connections.

7 Basically all of the routine utility costs that are incurred
8 for operating a facility.

9 Q At the Marshall County facility. That's unique to the
10 Marshall County facility. Is that right?

11 A Yes.

12 Q I should say isolated to that facility.

13 A Yes. The direct costs associated with that particular
14 location.

15 Q All right. And repair and maintenance, the \$231,000 figure
16 for that year, 2008?

17 A Similar it's going to be use of outside contractors for
18 repairs at the facility along with purchases of equipment and
19 supplies to do in-house repairs from the maintenance staff.

20 Q Now, let's talk about depreciation and amortization. You
21 have deducted that from the total revenue. Explain what
22 comprises the depreciation and amortization expense of 216,000.

23 A The depreciation expense for any of these locations would
24 be associated with assets that GEO had paid for and put into
25 service at the facility.

1 Q Such as?

2 A So it could be kitchen equipment. It could be security
3 equipment, radios. It could be -- I mean you have got lawn
4 equipment, vehicles. It could be --

5 Q But directly attributable to the Marshall County facility?

6 A Yes.

7 Q Okay. And then you have other operating expenses of
8 434,000. Where does that come from?

9 A It consists of -- I mean these facilities being managed
10 only didn't have significant property taxes, but if we had any
11 property taxes, it's going to cover property, vehicle and
12 property insurance, administrative costs like office supplies,
13 IT supplies, kind of things that don't roll up into those other
14 major categories.

15 Q And in that instance, all of that that's attributable to
16 Marshall County, any other expenses are located right there
17 within other expenses. Is that right?

18 A Yes, sir.

19 Q And then you have a total of operating expenses for that
20 one year of 10,449,535. Right?

21 A Yes, that's right.

22 Q Now, you have another figure below that of overhead.
23 Explain what you mean by overhead and that for that figure of
24 750,000.

25 A Well, in looking at an overall facility performance to

1 determine its profitability, we typically will apply an amount
2 of overhead associated with each location. In this case we
3 calculated the overhead based on that contract's revenue
4 relative to the company's total revenue, came up with a
5 percentage and allocated overhead based on that percentage. So
6 that, I would not view as a direct cost. That's more of an
7 indirect, which is why I separated it from the roll-up above,
8 because the subpoena requested -- had a specific request
9 related to direct costs. So that 10,000,449 is kind of the
10 subtotal of direct costs associated with that particular
11 operation.

12 Q So with this particular operation of Marshall County in
13 2008, are there any other expenses for 2008 attributable to
14 execution of that contract directly in Marshall County other
15 than the 10,449,535?

16 A Not that I'm aware of.

17 Q And you've -- when you say *not that you are aware of*, you
18 went through your accounting system and pulled all expenses
19 relating to Marshall County for 2008 that had been coded into
20 the system in that fashion?

21 A Yes.

22 Q So if there was another expense that should have been
23 included in Marshall County's expense, that may have been coded
24 in some place for a facility in some other location like New
25 York, for instance. That's possible. Is it not?

1 A It's possible but most definitely improbable.

2 Q But it is possible?

3 A Right.

4 Q Okay.

5 A I mean we don't audit every line item at every facility to
6 make sure that it's --

7 Q Right. These are the figures you actually rely upon in
8 determining profitability of the management of a particular
9 facility. Right?

10 A Yes.

11 Q And then the overhead is just a percentage spread out over
12 across all the facilities the company manages as a -- based
13 upon the percentage of revenue?

14 A Yes.

15 Q Okay. Gross revenue?

16 A Gross revenue, yes.

17 Q All right. So in this instance for 2008, the net to the
18 company after excluding or deducting the direct costs would
19 actually be the total of the \$750,441 and the 175,711. Is that
20 right?

21 A Yes. The 925,000 is the approximate profit for that
22 facility before applying overhead.

23 Q Before applying overhead?

24 A Yes.

25 Q And then the same manner without going through the specific

1 numbers, is that how you arrived at the figures for 2009 as
2 well?

3 A Yes.

4 Q And for each year thereafter from Marshall County as well
5 as for East Mississippi and for Walnut Grove?

6 A Yes. For each facility, every period reported.

7 Q Okay. And you had no numbers in Walnut Grove for '07, '08
8 and '09. Is that right?

9 A We didn't have those financial statements because Walnut
10 Grove was a contract under Cornell Companies which we acquired
11 in 2010, so we don't have the detailed historical financials to
12 provide.

13 Q Okay. But, in essence, not having that, it doesn't show
14 any gross revenue that may be affected or in this case.

15 Correct?

16 A Yes. The contract was awarded before 2010, and Cornell
17 Companies operated it prior to that. But I do not know the
18 start date or what the annual value of that was prior to us
19 acquiring the company.

20 Q All right. Now, look behind that. Do you see more
21 documents with regard to canceled checks?

22 A Yes.

23 Q As well as invoices?

24 A Yes.

25 Q Did you have any involvement with the production of that?

1 A I did not pull them, but I am familiar with our processes
2 in accounts payable. And, I mean, I recognize them all because
3 I have seen similar documents before in other situations when
4 we have had to pull invoices and check copies.

5 Q And the company did produce these in response to the
6 subpoena when the subpoena requested all payments for Cecil
7 McCrory and/or Investigative Research. Is that right?

8 A Yes. They were pulled in response to letter D from the
9 subpoena. Any and all payments, contracts and work products of
10 Cecil McCrory and/or Investigative Research.

11 Q All right.

12 MR. LAMARCA: May I have the court's indulgence a
13 moment, please?

14 THE COURT: Okay.

15 (SHORT PAUSE)

16 MR. LAMARCA: Your Honor, I would ask that G-1 be
17 admitted for this hearing and for the purposes of this hearing
18 only.

19 THE COURT: I will defer ruling on it until after I
20 have heard cross-examination.

21 MR. LAMARCA: Those are all the questions.

22 THE COURT: All right. We will start with you, Mr.
23 Colette.

24 MR. COLETTE: I renew my previous statement that I am
25 unprepared to take this, but I understand your ruling.

1 THE COURT: Well, I haven't said that we are going all
2 the way through. I just said that I am going to let you make a
3 record by this truncated testimony just on foundation and
4 predicate. So go right ahead.

5 MR. COLETTE: All right.

6 **CROSS-EXAMINATION**

7 BY MR. COLETTE:

8 Q Mr. Tyrrell, let me ask you one thing before we get
9 started. Taking Marshall County, have you got that exhibit in
10 there that the government was asking you about recently?

11 A Yes.

12 Q The summary you did? Okay. When you talk about 2008,
13 \$11,375 -- \$11,375,687, you came up with that number off of
14 some program you have got at your company. Right?

15 A Yes. I have a financial reporting system.

16 Q All right. Where does it reflect the charge-backs?

17 A That revenue would be -- I'm not familiar enough with this
18 particular contract, but if there were billing deductions or
19 adjustments related to paying for contract monitors or for
20 staffing penalties, those are going to be reflected in this
21 number. This is the net number paid to us by the State of
22 Mississippi.

23 Q All right. Because that happens. You get charged back.
24 If you don't have the correct number of people working,
25 M.D.O.C. would charge you back on your contract. Right?

1 A I'm not familiar with this contract, but that's not an
2 uncommon term in a contract.

3 Q But my problem is that 11,375, we just have to assume that
4 has charge-backs or whatever. That's a number you just pulled
5 off your program. Right?

6 A It's a number out of our system supported by our accounts
7 receivable subledger that contains all of the monthly billings.

8 Q But you don't know for sure if that reflects charge-backs
9 or not?

10 A If there are charge-backs, it should reflect them. Or if
11 there were.

12 Q Now, explain to me this, and maybe I just wasn't listening,
13 but staying with 2008, you had an \$11 million contract,
14 10 million in operating expense and you assigned a percentage
15 of revenue for overhead. Right?

16 A Well, we assigned a percent of overhead based on revenue,
17 yes.

18 Q But that figure, \$750,000, you basically have ascertained
19 that and you assigned it to this specific contract, being the
20 Marshall County contract. Right?

21 A That amount was for this particular contract.

22 Q You are able to do that. Right?

23 A I can pull the revenue number for any contract. I can give
24 you any --

25 Q But what I'm saying is the way your program, your financial

1 system is set up, your company allocates a certain percentage
2 of revenue for overhead for that specific project, that
3 contract?

4 A The application of overhead is not an automated part of our
5 system. It is a calculation that we did.

6 Q Let me ask you this. I'm looking at the document, and I
7 have got overhead 750,441. That has nothing to do with the
8 facility in Timbuktu. Does it?

9 A It's not a direct cost of operating that facility.

10 Q We're going to get to direct and indirect and how you
11 understand that. My question to you is on your sheet summary
12 that you prepared for us, the \$750,441, that's assigned only
13 overhead as to Marshall County. Correct?

14 A That amount is Marshall County's allocation of total
15 overhead.

16 Q No other contract?

17 A No.

18 Q Thank you. Did you tell us that you read *Lander* case
19 before you complied with this subpoena or was that your lawyers
20 did that?

21 A That must have been our counsel.

22 Q Because there is a different definition in accounting terms
23 for direct costs and variable costs. Is that correct?

24 A Yes.

25 Q So in this particular case, then, if the law says that you

1 can deduct overhead that's assigned to a specific contract,
2 then the profit for 2008 would be 175,000. Right?

3 A When you net the overhead into it, it would be 175.
4 Without the overhead, it would be --

5 Q And what does that word *fee* mean? It says fee. That
6 wasn't some fee to somebody?

7 A That's basically the remaining profit after applying
8 overhead.

9 Q All right. So the net would be 175,000 out of 11 million.
10 And you show this for '09, and then it looks like in '10 you
11 lost \$6,700 on a \$10 million contract. Right?

12 A Yes.

13 Q Now, you made up for it in '11. You made \$500,000. Right?

14 A Yes.

15 Q But you lost it in '12. 95,000. Right?

16 A In 2012 all three contracts were transitioned to another
17 operator.

18 Q All three contracts -- you were fired by Commissioner Epps
19 in 2012?

20 A I haven't seen those documents.

21 Q You don't have any bills for after 2012. The third quarter
22 of '12 after Commissioner Epps fired your company, you don't
23 have any bills for that. Do you?

24 A There are no direct facility costs associated after that
25 period that I'm aware of.

1 MR. COLETTE: May I approach the witness?

2 THE COURT: You may.

3 BY MR. COLETTE:

4 Q I'm not saying you pulled it, but have you looked in that
5 packet?

6 A Yes.

7 Q Who decided to give Cecil a raise from 5,000 a month to
8 10,000 a month? You?

9 A No, it was not me.

10 Q Somebody in your company, though. Right?

11 A Yes.

12 Q Who was that person?

13 A The person who signed it is Wayne Calabrese who is our
14 former president and chief operating officer.

15 Q So your former president and chief operating officer
16 decided because of Cecil, whatever it says, their need for
17 increased consulting services, they increased his fee to 10,000
18 a month effective October 1st, 2010. Is that correct?

19 A That's what the letter says.

20 MR. COLETTE: I would like to have this marked as an
21 exhibit. It is contained in the court's exhibit for
22 identification. But I have this as D-1 for identification.

23 THE COURT: D-1 for identification.

24 BY MR. COLETTE:

25 Q And you have got -- and you have in that stack a series of

1 checks that look like to be 5,000, 5,000 to either Cecil and/or
2 to Investigative Research that goes up to 10,000. Is that
3 correct? They look like about monthly.

4 A It was a monthly invoice that he submitted for payment.

5 Q Did you see any checks in there to Christopher Epps?

6 A No.

7 Q Are you aware of any payments that your company made to
8 Christopher Epps?

9 A I am not.

10 Q Do you know what Mr. McCrory did with whatever consulting
11 fees his company received?

12 A I do not.

13 Q How long did it take you to comply this summary,
14 Mr. Tyrrell?

15 A It took, I mean, the better part of an afternoon.

16 Q You just pulled it off the computer?

17 A The reports come directly out of our system and then I
18 summarized them to that.

19 Q And you do have all the backing, the supporting
20 documentation, at your company for this?

21 A There is detailed profit and loss statements for each
22 facility for each year that support those.

23 Q You have them back home?

24 A I have them. They were not submitted as part of the
25 subpoena. The detailed reports behind those were not submitted

1 as part of a subpoena.

2 Q And who made that decision? Do you know?

3 A It was done through myself, our legal department. That's
4 what was --

5 Q So when the subpoena called for the profit & loss
6 statement, independent costs, fees, you just did the summary.
7 Right?

8 A That summary was intended to meet the first couple bullets
9 of the subpoena request.

10 Q But these documents are available at your home office?

11 A Yes.

12 Q All right. Now what about this third page? I understand
13 the second page of this summary. There was three pages that
14 had numbers on it in the stack there. Right?

15 A Yes.

16 Q And Mr. LaMarca asked you about the second page, and that
17 has total revenue from '07 to '12, which was 188,445,628, but
18 because they backed out of some of 2007, he is using a number
19 of 148 million. Are you aware of that?

20 A Yes, sir.

21 Q All right. But those are all gross contract values.

22 Right?

23 A Yes.

24 Q Where is the summary that shows me the profit, the net
25 benefit that your company made for '8, '9, '10, '11, '12 for

1 these three facilities? Did you do that summary?

2 A I mean that's kind of where I see the fee line being the
3 net benefit to the company, because that would be our pretax
4 profit after applying an allocation of overhead. So the fee
5 line is essentially the net benefit to the company.

6 Q All right. So stay with me for a second. If I take the
7 fee line for Marshall County in '08, I have got 175,000
8 approximately. Right?

9 A Yes.

10 Q And then I have got 264,695. Right?

11 A Yes.

12 Q I would then deduct the 6774. Right? Because you lost
13 money?

14 A Yes.

15 Q If I was going to try to get a number of a net benefit for
16 each of these three and/or totally, it's a plus and minus deal.
17 Right?

18 A It would be the sum of the profit for the years that were
19 requested.

20 Q Right. And so you have got 175,000 for '8; 264,000 for '9;
21 you are minus 6,700 for '10; you add 599,000; then you deduct
22 95,000. Are we okay so far?

23 A I'm following.

24 Q And then down on East Mississippi, you have 434,000 profit,
25 then \$2.7 million profit, 2.6 million profit. You lose

1 290,000. And in '12 you lose \$5,039,696. Right.

2 A Yes.

3 Q So that number has to come off of all of this net benefit
4 to arrive at whatever figure, and then you would add the fee
5 line down on Walnut Grove, the 877, the million and the 14.
6 Right?

7 A Yes.

8 Q And you didn't do that as a separate computation?

9 A No. That was not summarized.

10 Q You could hit a button on the computer and get that,
11 though. Couldn't you?

12 A Yes.

13 Q Do you know where is the authority -- let me see. Where
14 are the authority board fees? You had to pay authority board
15 fees up there, didn't you, at this facility?

16 A If we had them, they would be probably rolled up into the
17 other operating expense line under professional fees.

18 Q Probably, but we don't know if your program picked that up.
19 Right?

20 A It most definitely picked up any expense that's there, but
21 drilling down into the line item to know if it's that
22 particular item, I have not done.

23 Q Okay.

24 MR. COLETTE: I think that's all I have of this
25 witness, Your Honor. Thank you, Mr. Tyrrell.

1 THE COURT: Mr. Tanner?

CROSS-EXAMINATION

3 BY MR. TANNER:

4 Q Say your last name for me again.

5 A Tyrrell.

6 Q Now, Mr. Tyrrell, out of this big stack of documents that
7 the court has taken up that's been marked for identification as
8 Exhibit 1, the only three documents that you can answer
9 anything about for us specifically are these three financial
10 pages?

11 A Those three are the pages that I personally prepared. I'm
12 familiar with the other documents.

13 Q Okay. When you say you're familiar with them, when did you
14 become familiar with them, sir?

15 A I probably reviewed them within the last -- I mean I
16 reviewed them all in detail prior to coming here to make sure I
17 was a little more familiar with them, but basically I saw them
18 shortly after our accounts payable group pulled them.

19 Q Okay. And when your accounts payable pulled them and gave
20 them to you, was that prior to or after you had compiled your
21 charts here?

22 A It was after I had compiled mine.

23 Q Okay. So you didn't look at those numbers and see if they
24 affected your chart in any way?

25 A No. These -- the consulting fees that were paid out are

1 part of overhead. They are not booked at the facility level.

2 Q Okay. I don't think you have told us yet, sir. When did
3 you start working with GEO in this capacity?

4 A Well, I have been with the company just shy of 18 years. I
5 have been in my current role for nine.

6 Q Okay. And prior to that, what were you doing?

7 A Prior to that, I was a business manager at two of our
8 different facilities, spent about four or five years doing
9 that. And then prior to that, I did accounts payable, fixed
10 assets and accounts receivable. So I worked at various places
11 around our corporate office and at a couple of business units.

12 Q Okay. And for the last nine years, you have had the
13 position you currently hold?

14 A I think I started at the corporate office. When I
15 transferred back, I was a manager and have been promoted to
16 director but it's been similar responsibilities for that
17 period.

18 Q Okay. And what year was that just to be sure?

19 A 2007 is when I transferred back to the corporate office.

20 Q Okay. Now, sir, the numbers you put in your chart, the
21 chart that -- for the benefit of the record, the chart that has
22 at the bottom right-hand corner a date that says 5-18-2016?

23 A Yes.

24 Q All right. On that spreadsheet, sir, each column that you
25 have under each of the three contracts or M.D.O.C. facilities,

1 those are done in calendar year terms. Right?

2 A Yes.

3 Q Tell us when your company hired Mr. McCrory to be a
4 consultant.

5 A Based on the agreements in here, I think it was 2008.

6 Q 2008. When did your contracts with the State of
7 Mississippi begin, sir?

8 A The Marshall County contract started long before that,
9 probably goes back to the late nineties.

10 Q Okay. So you had contracts with M.D.O.C. well before Cecil
11 McCrory ever got involved with your company. Is that fair?

12 A I believe that's correct.

13 Q Who was the Mississippi Department -- who was the
14 Commissioner of M.D.O.C. when your company started getting
15 these contracts, sir?

16 A I do not know.

17 Q Do you know how long Mr. Christopher Epps has been the
18 Mississippi Department of Corrections Commissioner?

19 A Unfortunately, I do not.

20 Q Okay. Do you know how long he has worked there?

21 A No.

22 Q How did your company -- now, I want to go back to the
23 subpoena. Sir, I'm going to put the subpoena back up on the
24 Elmo here. Is this the subpoena, sir, that you responded to?
25 I'm showing you the first page. And now I will show you the

1 second page. I think you have been referring to bullet points
2 A through D?

3 A Yes.

4 Q Have you ever -- is this your first time ever responding to
5 a subpoena to produce records that you received from the
6 federal government?

7 A Yes.

8 Q This is the first time?

9 A First time I have, yes.

10 Q So it wouldn't be a surprise to you to see one this short?

11 A I don't have a point of reference, so --

12 Q Did you and your lawyers -- well, I'm not asking you how
13 they talked to you or what they advised you, but when you all
14 were putting this together, did you try to comply with what the
15 government asked you to do?

16 A Based on this, I believed we were.

17 Q Okay. And you all didn't in any way limit the government
18 on what they could have asked you for. Is that fair?

19 A No. I'm not aware of any limitations.

20 Q And the same way the government asked you for a profit and
21 loss statement and you produced that, had they asked you for
22 the underlying documents, you would have had to produce that as
23 well. Right?

24 A Not to my knowledge.

25 Q Okay. You would not have produced it?

1 A If they had asked for additional detail, I'm sure we would
2 have provided it.

3 Q Right. Just like y'all provided everything they did ask
4 for?

5 A Yes.

6 Q Can you explain to the court why the government is relying
7 on you and just taking a summary of what you say happened as
8 opposed to looking into these numbers themselves?

9 A I can't speak to that.

10 Q Okay. Give us a list, sir, of what these indirect costs
11 are. For example, under Marshall County, the 750,441 that you
12 list as overhead, tell us what that includes.

13 A It -- basically our overhead departments consist of our IT
14 group, IT infrastructure-related costs, our software
15 applications that are used company-wide. It includes our legal
16 department, our corporate human resources. We have payroll
17 tax, business management, which covers finance and accounting,
18 covers our design group which manages any capital projects in
19 construction. Just all of our different corporate groups.

20 Q Okay. Now, payroll tax, just to take that as one example,
21 you owe payroll taxes on each of your employees?

22 A Yes.

23 Q Including the employees at Marshall County?

24 A Yes.

25 Q All right. So even though you call that overhead --

1 A It's payroll processing, not payroll tax. It is the
2 payroll people that process all the payroll checks. Payroll
3 tax expense is part of the facility's personnel-related costs.

4 Q Okay. That's fair, but you did just say payroll tax.
5 Right?

6 A I said payroll and tax.

7 Q You said payroll and tax?

8 A Yes.

9 Q That's the part I didn't hear. Thank you. Now, as far as
10 you having these contracts that go well prior to 2007, had the
11 government asked you to produce records related to those
12 contracts, the ones that go back to the nineties, you would
13 have had to produce those as well, or would you have produced
14 those as well?

15 A If they were requested, we would have.

16 Q All right. Give us the exact date that Cecil McCrory was
17 hired by your company in 2008, as you said.

18 A Let me look for the consulting agreement.

19 Q Now, you're looking for a consulting agreement that you
20 weren't familiar with until after you put your sheet together.
21 Is that fair?

22 A I mean we have a standard format that's used, so I'm sort
23 of familiar with the document, but I have not seen his
24 particular agreement until this subpoena.

25 Q Okay. Let me ask you --

1 A Looks like the first agreement was August 2008.

2 Q August 2008.

3 A That's based on the document here.

4 Q August what 2008 was the effective date?

5 A August 1st.

6 Q August 1st of 2008?

7 A Yes.

8 Q All right. Was that the date that the agreement was
9 executed or was that the date of the first payment?

10 A Looks like the date -- the signatures are not dated, but it
11 looks more like the execution date versus the first payment
12 date. Typically the payment would be the month following the
13 submission of an invoice under the agreement. So if he started
14 providing services August 1st, the next payment would be
15 September for what he provided in August.

16 Q Okay. And you already had a contract in place at that
17 time?

18 A With the State of Mississippi, we did, yes.

19 Q Okay. Now, in your figure for Marshall County, for East
20 Mississippi, for example, do you break out here for the court
21 so the court can see this whole bribe that got you these
22 contracts, do you break out the months January through August
23 so the court can determine which portion of this 2008 figure is
24 attributable in any way to some contract through a relationship
25 with Mr. McCrory?

1 A We did not break it out, but monthly detail could be
2 provided to derive that specific period of performance.

3 Q You weren't asked for that. Were you?

4 A No, we were not.

5 Q And you have not given -- because you weren't asked for it,
6 regardless of what the defense here has gotten, you didn't
7 provide that to the government, so they don't even have a
8 breakdown of what was triggered or what happened after the
9 execution of your contract with Mr. McCrory?

10 A 2008 broken out preAugust and August forward was not
11 provided.

12 Q Okay. So if the court goes with a figure from 2008, we
13 have to go with your whole year calculation as opposed to the
14 date that Mr. McCrory took on this contract?

15 A Well, I believe that he prorated the amount to come up with
16 5/12ths worth of the number presented here.

17 Q Okay. That's fair. Now, as far as the contract is
18 concerned -- no, let's go back to 2008. Now, you say prorated.
19 Right?

20 A Right.

21 Q Now, revenue isn't necessarily consistent throughout the
22 year. Is that fair?

23 A It can fluctuate.

24 Q All right. And all these figures can fluctuate month to
25 month to get you your total on the year. Is that fair?

1 A Yes, it can.

2 Q All right. Do you know if that happened here?

3 A There is probably a little bit of month-to-month variance.

4 I mean you have got months that have more holidays which
5 generate more labor costs. So it's going to vary.

6 Q Okay. And we haven't been given -- we, the defense nor the
7 government, has been given any documentation that would show
8 that. Is that fair?

9 A At this point, I do not believe so. I know I haven't
10 prepared anything for that.

11 Q Okay. Who was your consultant prior to Mr. Cecil McCrory?

12 A I don't know.

13 Q You don't know?

14 A No.

15 Q Did you have one?

16 A I do not know.

17 Q Does GEO make it a practice since -- you operate
18 nationally, right, on a national basis in your position?

19 A Yes.

20 Q All right. Is it a common practice for GEO to employ
21 consultants in all the various states in which you operate?

22 A Yes. We often have consultants in various jurisdictions
23 where we do business.

24 Q Okay. And is it common for these people to apply for
25 positions with you?

1 A I don't think it's very common. If it is, I'm not aware of
2 that circumstance.

3 Q Do you know who contacted who? Did your group contact
4 Mr. McCrory, or did Mr. McCrory contact your group about
5 employment?

6 A I do not know.

7 Q All right. If it was your group that contacted
8 Mr. McCrory, who suggested that you contact Mr. McCrory?

9 A I have no idea.

10 Q Now, in your capacity, you do a lot of complex financial
11 calculations. Isn't that right?

12 A Yes.

13 Q All right. Let's start with an easy one. What's
14 40 percent of 10,000?

15 A 4,000.

16 Q 4,000?

17 A Yes.

18 Q All right. So if you paid somebody, say, Cecil McCrory
19 \$10,000 and he reported \$10,000 on his taxes and he was charged
20 40 percent for that, he would have been left with 6,000.

21 Right?

22 A Yes.

23 Q Do you know how much he is alleged to have paid Mr. Epps
24 during the course of his contract on a month-to-month basis?

25 A No.

1 Q Okay. Now, your company would not have paid Mr. McCrory
2 for work that he didn't do. Isn't that fair?

3 A That's probably a fair statement. I mean I don't have
4 information related to what products or services he delivered
5 to us. Working in the finance department, I don't have direct
6 relationships with our consultants.

7 Q Does accounts payable fall under your finance department?

8 A It falls under our chief financial officer, so it falls
9 under finance and accounting.

10 Q Now, did Mr. McCrory not have to submit invoices to GEO in
11 order to get paid?

12 A He did submit invoices, which is part of what documents are
13 provided in this exhibit.

14 Q And would those invoices have gone to the finance
15 department prior to Mr. McCrory being paid?

16 A They get submitted to our executive office, and then they
17 get sent down to accounts payable, and they are approved by our
18 comptroller or assistant comptroller.

19 Q Okay. So regardless of the chain, sir, my question is do
20 Mr. McCrory's invoices get to the finance department prior to
21 him being paid?

22 A Finance department? No. They do not come to the finance
23 department. They go to the accounting department.

24 Q Okay. And those are separate departments?

25 A They both fall under our chief financial officer, but there

1 is two different groups.

2 Q All right. Did your company ever quarrel with the amount
3 of work that Mr. McCrory invoiced you for?

4 A I don't know.

5 Q All right. You didn't look at that in your accounting
6 system or whatever you printed this document from?

7 A I mean our accounts payable system isn't going to flag a
8 dispute on an invoice or something.

9 Q Okay. But you could have pulled invoices that Mr. McCrory
10 sent. Right?

11 A Invoices were pulled.

12 Q Is that all of them?

13 A I think it's all the ones that they had in the system.

14 Q But you wouldn't know because you didn't pull them. Right?

15 A Yes, they are pulled by our accounts payable manager.

16 Q You did not pull them?

17 A I did not personally pull them.

18 Q Okay. Now, as far as Mr. McCrory is concerned, what
19 percentage of these 5,000 and then \$10,000 checks, what
20 percentage of these checks did Mr. McCrory put in his own
21 pocket at the end of the day?

22 A I have no idea.

23 Q Now, tell the court, I mean, because Mr. McCrory was
24 initially getting \$5,000 a month from your company. Isn't that
25 fair?

1 A Yes. That's accurate.

2 Q And at some point, that \$5,000 figure was raised to
3 \$10,000. Is that fair?

4 A Yes. Looks like that increase corresponded with our
5 acquisition of Cornell Company, so we had an additional
6 contract in the State of Mississippi. So it would appear that
7 there was a slightly broader scope of --

8 Q Who asked for the invoice? Did you offer the invoice? You
9 meaning GEO. Did GEO offer the increase on its own, or did
10 Mr. McCrory request an increase?

11 A I don't know.

12 Q But y'all printed out the letter where you offered him an
13 increase. Right?

14 A I have seen the letter. I believe it was signed by Wayne
15 Calabrese.

16 Q Okay. Well, good. Look at it again for me.

17 A Referring to a letter dated September 2nd, 2010?

18 Q Is that the letter where he gets the \$5,000 bump?

19 A Yeah, increase fee to \$10,000 effective October 1st.

20 Q Are you all offering him an increase or is he asking you
21 for an increase?

22 A I mean I don't know the conversations that occurred prior
23 to the letter, but it appears to be a request for increased
24 services resulting in an increase in fee.

25 Q You don't know those conversations and you don't even know

1 if Mr. McCrory had such a conversation. Is that fair?

2 A No, I'm not involved in that particular process of engaging
3 and managing our outside consultants.

4 Q And you also don't know if, say, Mr. Epps got y'all to
5 offer that increase in salary or in consulting fees?

6 A At this point, I do not.

7 Q Is there anything at your office that you can tell us that
8 would help substantiate what this document that you produced
9 means?

10 A I mean the financial documents consist of summarized
11 financials prepared which are normally accepted accounting
12 principles. I mean they are -- individual facilities don't get
13 audited but our financial statements are audited and filed
14 publicly.

15 Q Mr. McCrory had no ability to hire and fire you all or
16 grant or deny you all contracts. Did he?

17 A In his position, I don't know what his authority was. I'm
18 here to support the financial information that we provided. I
19 am not here to answer questions about contract.

20 Q You are here to answer what I ask you unless the court
21 tells me otherwise. Now, as far as -- so let's take that for a
22 second. You are just here to answer the documents about these
23 three pieces of paper. Is that fair?

24 A That's why they requested I come down here.

25 Q All right. For these three pieces of paper?

1 A For the packet. I mean I'm comfortable with the accounts
2 payable documents. I'm familiar with the consulting agreement.
3 So I can speak to our accounts payable process. I would view
4 it as not limited to those three pages.

5 Q These contracts you have got, sir, who got them for you?
6 What process did you go through to get your contracts with
7 these facilities in Mississippi?

8 A The process of getting the contracts?

9 Q Yes, sir. You included the contracts in your packet.

10 MR. LAMARCA: Your Honor, if I might object at this
11 point, the court asked counsel to question the witness with
12 regard to the predicate for the financial records. We were not
13 asked to go into who acquired the contracts, whether -- and at
14 what basis these contracts were acquired. None of that was
15 requested of the court.

16 THE COURT: I will put a pin on that area and I will
17 come back to that. All right. Ask some more questions about
18 the predicate for the documents.

19 MR. TANNER: Yes, Your Honor.

20 BY MR. TANNER:

21 Q Now, these numbers, are you looking at this -- these
22 revenue figures in this chart you put together?

23 A This one?

24 Q Yes, sir. The one you're here to answer. Those three
25 pages?

1 A Yes.

2 Q Let's go to Marshall County. Are you looking at Marshall
3 County?

4 A Right.

5 Q In 2007, how much revenue did you report that you got from
6 the State of Mississippi?

7 A 11,191,431.

8 Q That's 11,191,431. Is that fair?

9 A That's the revenue number, yes.

10 Q Okay. And at that point you didn't have Mr. McCrory
11 working for you. Is that right?

12 A Not that I know of.

13 Q Is that right?

14 A I believe so.

15 Q And in 2008, once you hired Mr. McCrory, regardless of when
16 the fluctuations occurred in your month-to-month expenditures,
17 you all's revenue didn't increase that much. Right?

18 A Not at Marshall County.

19 Q All right. What about in 2009 in Marshall County? Your
20 revenue didn't increase that much from '08 to '09. Did it?

21 A No.

22 Q Okay. What about from '09 to 2010? It actually went down
23 then. Right?

24 A Yes. it did.

25 Q All the while Mr. McCrory is working for you. Is that

1 fair?

2 A That is fair.

3 Q Now, did the scope of your contracts ever change in terms
4 of what you all were assigned to do for these different
5 facilities?

6 A Marshall County I think was pretty stable during the whole
7 time, but at East Mississippi there was an expansion that
8 activated in 2009.

9 Q Okay. And when you say expansion, do you mean the size of
10 the --

11 A Increase in facility capacity, increase in the overall
12 contract and number of beds that we managed.

13 Q Okay. Who authorized that increase in the facilities?

14 A It had to be done through some state administrative
15 process, through the legislature or depending on what the
16 authority is of the various agencies.

17 Q A legislature or commission?

18 A Whatever the appropriate governing authority is.

19 Q Okay. Now, who was it -- y'all don't -- GEO doesn't work
20 for M.D.O.C. anymore. Does it?

21 A Not anymore.

22 Q As of when?

23 A As of looks like the third quarter of 2012. It was August
24 or September of 2012.

25 Q Okay. And at that point how did -- did y'all withdraw

1 y'all's services from the State of Mississippi voluntarily, or
2 how did that work? Or were y'all fired?

3 A I really don't know. I think the situations may be
4 different at each of these three contracts. I think we -- I
5 don't know. I would have to -- you would have to request the
6 correspondence from the company or something, because I don't
7 know.

8 Q Is Wayne Calabrese -- or how do you say his name?

9 A Wayne Calabrese.

10 Q Calabrese?

11 A Yes, sir.

12 Q And that's C-A-L-A-B-R-E-S-E?

13 A C-A-L-A-B-R-E-S-E, yes.

14 Q Now, Mr. Calabrese, is he still with GEO?

15 A He is no longer employed by the company but he is a
16 consultant.

17 Q In what state?

18 A He actually spends more time on international projects at
19 this point, but he is -- I am not sure what he has worked on
20 domestically.

21 Q Okay. The whole time that this chart reflects, this 2007
22 through 2012, what was Mr. Calabrese's responsibility with your
23 company?

24 A He was the chief operating officer. His primary function
25 was business development, but he --

MR. LAMARCA: Your Honor, I'm going to object. This has nothing to do with the figures that are listed here as far as the reliability of these figures in getting to the net benefit of these contracts.

THE COURT: I'm going to hear the answer to this one.

BY MR. TANNER:

Q Mr. Calabrese during this 2007 through 2012 that was shown in your diagram or your chart, excuse me, what was Mr. Calabrese' position with GEO?

A He was the president and chief operating officer until his retirement, which I want to say was '11 or '12, but he retired.

Q '11 or 2012 he retired from the company?

A I believe so.

Q And now he works as a consultant for GEO?

A Yes.

Q And he, Mr. Calabrese, is the gentleman who increased GEO's consulting services in Mississippi and thereby increased the fee to Mr. McCrory to \$10,000 per month. Is that right?

A He is the one who prepared the letter or submitted the letter.

Q Okay.

MR. TANNER: Your Honor, may I have a moment to confer with my client?

THE COURT: Go ahead.

1 (SHORT PAUSE)

2 MR. TANNER: Your Honor, I pass the witness.

3 THE COURT: Okay. I believe Mr. Waggoner is not
4 involved in this. Is that correct?

5 MR. BAIN: That's correct, Your Honor. I have no
6 questions.

7 THE COURT: Any redirect here?

8 MR. LAMARCA: Yes, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MR. LAMARCA:

11 Q Mr. Tyrrell, if you will look at your accounting pages
12 again, those are the three pages that you generated. Is that
13 right?

14 A Yes.

15 Q The rest of these documents you became familiar with by
16 reading them just like anybody else would. Is that right?

17 A Yes.

18 Q Do you have anything with the negotiation -- to do with the
19 negotiation of those documents?

20 A No.

21 Q With the creation of those documents?

22 A No.

23 Q So all the questions asked of you about the genesis of
24 those documents, the contract, the consulting agreement, is
25 outside of what you know. Is that right?

1 A That's right.

2 Q Now, when you said that you assigned particular overhead
3 percentage to a various facility here, to a particular year, do
4 you remember talking about that?

5 A Uh-huh.

6 Q And in that regard, you take the entire overhead for the
7 company and then just distribute it over the facility based
8 upon gross revenue. Is that right?

9 A Yes.

10 Q That had nothing to do with the direct costs of operating
11 that facility. Did it?

12 A Correct.

13 Q Nothing. Right?

14 A Yes. It had nothing to do with direct operating costs for
15 the facility.

16 Q Now, secondly, it was asked of you that all you had to do
17 was hit a button and you could have gotten all of these totals
18 at one time. Right?

19 A Multiple reports, because you have got to run it for each
20 facility for different years.

21 Q If you wanted to know the total revenue of these three
22 facilities, a calculator would give you that, too, based upon
23 the document you have in front of you. Right?

24 A Yes.

25 Q And you could easily take 5/12ths of 2008, a time period

1 which began the consulting fee, and determine based on 2008
2 from August 1 of 2008 what would be attributable to any fee or
3 any expense of the company or any revenue of the company after
4 it entered that consulting fee arrangement with Mr. McCrory's
5 company or Mr. McCrory himself. Correct?

6 A It's not likely to be materially different if you prorated
7 it versus looking at the specific months.

8 MR. LAMARCA: Those are all the questions I have, Your
9 Honor.

10 THE COURT: Okay. You can step down.

11 THE WITNESS: Thank you.

12 THE COURT: Hold it. You can stand right here. With
13 regard to -- have a seat back up there again so you don't feel
14 uncomfortable. With regard to this financial data, you just
15 hit a button on the computer to generate this?

16 THE WITNESS: Yes.

17 THE COURT: This report is not a normal report that's
18 provided in your regular course of business. Is it?

19 THE WITNESS: The report that supports the summary
20 that I prepared is a report that we use on a monthly basis to
21 review facility performance. So the report that -- the
22 underlying report is a routine report that we use all the time.

23 THE COURT: You said underlying report.

24 THE WITNESS: Yes.

25 THE COURT: What I have up here, is that the

1 underlying report?

2 THE WITNESS: No. It is the summary.

3 THE COURT: This summary then is not something that
4 you use in your everyday activities?

5 THE WITNESS: Not routinely.

6 THE COURT: So then obviously with a summary you base
7 it on some specific data that your computer then totals and
8 generalizes?

9 THE WITNESS: Yes.

10 THE COURT: But the document that you prepared here is
11 a document that was prepared strictly in answer to the
12 subpoena. Is that correct?

13 THE WITNESS: Yes, it is.

14 THE COURT: So the backup information is all in the
15 computer?

16 THE WITNESS: Yes.

17 THE COURT: And did you have anything to do with the
18 inputting of that information into the computer?

19 THE WITNESS: No, because -- not to get into too much
20 detail, but we have a department that does accounts receivable,
21 we have a couple staff that do fixed assets. So the individual
22 pieces of data that roll up, the payroll data, the accounts
23 payable data for utilities, there is different groups that
24 support those different areas. Accounts payable doesn't manage
25 the revenue number. Accounts payable doesn't manage the

1 payroll number. But they are the ones that cut the checks for
2 the utility bills. So the whole department has some piece of
3 the process in building up the consolidated financial numbers
4 you see in front of you.

5 THE COURT: But wouldn't the accounts payable be
6 important to know with regard to the financial structure and
7 picture of the corporation?

8 THE WITNESS: I'm not sure I follow the question.

9 THE COURT: Well, wouldn't the accounts payables be an
10 item which should be included within your financial report so
11 as to provide information to any observer to know the financial
12 strength of the company?

13 THE WITNESS: I mean accounts payable, they -- I mean
14 they don't do the financial reporting. A financial reporting
15 group does the external reporting and does our SEC filings.

16 THE COURT: But accounts payables would be accounted
17 for on your --

18 THE WITNESS: The cost of managing the accounts
19 payable would be part of that overhead line item. It is an
20 overhead department, and it would be part of that overhead
21 allocation that's on that summary.

22 THE COURT: Okay. Now, this summary that you provided
23 is a gross summary?

24 THE WITNESS: It's -- I mean by gross, I mean I guess
25 with the revenue-related questions, if there are deductions

1 from the M.D.O.C. for staffing vacancies or something, the
2 numbers on that report would be net revenue, but it would be
3 the gross amount we received from the Mississippi Department of
4 Corrections. So it's the total paid to us by the Department of
5 Corrections.

6 THE COURT: And with regard to the underlying data,
7 how voluminous would that be?

8 THE WITNESS: It would be incredibly voluminous if you
9 wanted to get into the individual payroll records as far as
10 timecards for the individual employees for the periods being
11 presented. It would be incredibly voluminous.

12 THE COURT: What do you mean by incredibly?

13 THE WITNESS: Over the course of that period of time,
14 there is probably -- depending on what turnover was, there
15 could be a thousand different employees that you have got to
16 pull payroll records for every -- basically a payroll is
17 biweekly. If you wanted to get down to the timecard, you would
18 be talking about hundreds of timecards for every two-week
19 period that would need to be compiled to support the total
20 payroll cost.

21 THE COURT: Now, who actually ran this information
22 off?

23 THE WITNESS: Well, I ran the reports, and the reports
24 consist of all the data fed into it from the other systems,
25 from accounts payable, accounts receivable.

1 THE COURT: So you are the one who went over to the
2 computer and pulled the numbers?

3 THE WITNESS: Yes. I went from my desk, ran the
4 reports, put them in Excel and created that summary.

5 THE COURT: And did that computer already have a
6 program for this, or did you create one?

7 THE WITNESS: I didn't have to create a program. I
8 mean our system -- the reports were run out of the Hyperion
9 system which has a function to export them to Excel. They were
10 put into Excel and then summarized.

11 THE COURT: So walk me through how you actually went
12 over to the computer and got this information.

13 THE WITNESS: So I logged into the system.

14 THE COURT: Okay.

15 THE WITNESS: We have a report that's called a
16 management report, a P&L. You select a report and then you
17 select what facility you want to run.

18 THE COURT: Now, hold up. When you say select a
19 report?

20 THE WITNESS: I would select the management report,
21 the profit and loss statement.

22 THE COURT: Okay. You selected a profit and loss
23 statement for what?

24 THE WITNESS: So I select a report, and then when you
25 select a report, you have to pick what facility you want to run

1 it for. So I could run it for Marshall County, East
2 Mississippi, Walnut Grove or South Bay Correctional Facility in
3 Florida.

4 THE COURT: So then you said you wanted a profit and
5 loss statement?

6 THE WITNESS: So I picked the profit and loss
7 statement report, selected the facility, so I started with
8 Marshall County. So I selected Marshall County as the
9 facility, and then you select the data set you want to run,
10 because if I wanted to look at the budget, I could run a
11 budget. I could look at the forecast. So I picked actual as
12 the data that I want to run. And I pick the time period, so I
13 would pick the year. And in this case, I ran the full year. I
14 could run a particular month, a particular quarter. So I
15 picked Marshall County, 2007, actual full year and execute the
16 report, and it comes up with that facility's detail.

17 THE COURT: And that's for the full year?

18 THE WITNESS: For the full year.

19 THE COURT: Then you did it for the next year.

20 THE WITNESS: And then I did it for the next year and
21 the next year. So I did that for each facility to get all the
22 data for the years that were requested.

23 THE COURT: Now, did you have to have help from
24 someone?

25 THE WITNESS: No.

1 THE COURT: So you could do all of that yourself?

2 THE WITNESS: In this case, I did the entire thing
3 myself.

4 THE COURT: Is this something that you normally do?

5 THE WITNESS: We get -- I mean depending on what
6 operations is requesting. I mean we get different kinds of
7 requests. Sometimes we are compiling medical cost data.
8 Sometimes it might be food service. This isn't the most common
9 kind of request for historical data going back this far, but I
10 mean we have the reports that already exist to provide the
11 data, so there is nothing -- nothing that we had to create or
12 nothing extraordinary that we had to do to pull the reports to
13 provide this.

14 THE COURT: So all these categories were already --

15 THE WITNESS: Those are the categories that we use --

16 THE COURT: All the categories were readily available
17 on the computer?

18 THE WITNESS: Yes.

19 THE COURT: You didn't have to create anything?

20 THE WITNESS: Yes. The expenses are already broken
21 out into those categories. In the case -- an example, in the
22 case of the personnel and related costs, I combined direct
23 labor and taxes and benefits into that one line. But direct
24 labor, benefits and payroll taxes are roll-ups on the report
25 that we use.

1 THE COURT: Okay. Now you had said before this is
2 something you normally do?

3 THE WITNESS: When we would get a request like this, I
4 would expect it to come to me to complete.

5 THE COURT: You have gotten other requests?

6 THE WITNESS: Not like this, but if some member of
7 management is looking at a particular facility and they want
8 some historical financials, that kind of stuff comes through me
9 or my group. In this case I compiled that without any outside
10 assistance.

11 THE COURT: Okay. Is there anything you need to add
12 to this in order to give a compete picture?

13 THE WITNESS: I believe that paints a complete picture
14 for those three facilities. I don't really have anything to
15 add.

16 THE COURT: So then this figure here at the bottom of
17 188 million, etcetera, that represents what? It says total
18 revenue at the top.

19 THE WITNESS: That's the total revenue received by GEO
20 from the Mississippi Department of Corrections for the periods
21 presented. Unfortunately, I don't have the historical
22 information for Walnut Grove, so the Walnut Grove total is
23 incomplete, which I mentioned earlier. We acquired Cornell
24 Companies, and we didn't have the preacquisition detail to
25 submit with the subpoena.

1 THE COURT: Okay. You have a footnote over on the
2 preceding page that says Walnut Grove was a facility acquired
3 in 2010. Preacquisition data is not available.

4 THE WITNESS: Right. That's what I was just saying,
5 that the historical Walnut Grove data was not available.

6 THE COURT: Did you add this footnote?

7 THE WITNESS: Yes, I did.

8 THE COURT: Based on my questions, are there any
9 additional questions?

10 MR. LAMARCA: No, Your Honor.

11 MR. COLETTE: No, Your Honor.

12 MR. TANNER: Not from Mr. McCrory, Your Honor.

13 THE COURT: All right. You can step down.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Colette, what is your motion with
16 regard to -- I mean what is your argument after this
17 examination with regard to your request for a continuance?

18 MR. COLETTE: Well, I think, like this witness like
19 every other one I anticipate him calling, he said he was going
20 to call 10 20-minute witnesses, I believe Rule 1006 provides
21 that you can use a summary chart if it's a lot of documents,
22 but the proponent must make the originals or duplicates
23 available to ascertain whether these costs were included or
24 not. And again, even what you just heard, Judge, that's all
25 great, but that 188 million, 148 million, those are red

1 herrings. That's not even the number we are looking for. What
2 we are looking for is the net benefit. And that's why you
3 would have to take -- and the argument is going to be -- I can
4 anticipate it right now. Here is the argument just with
5 respect to GEO. The number we're looking for is net benefit as
6 a result of the bribe, a bribe between Cecil and Mr. Epps with
7 respect to GEO.

8 First of all, there was no bribe in this contract.
9 The consulting fees that Cecil got probably were split with
10 somebody who is not named. And that, we wouldn't be able to
11 do. The second thing is this, Judge. As you just saw, the
12 government reads *Landers* a little differently than I read it,
13 and obviously we are both going to rely on how you read it.
14 And that is when I took them to 2008 and I said tell me what
15 was your profit for 2008, and he said 175,000, because you
16 deduct the overhead. And they assigned a percent of the
17 overhead. And Darren got up on redirect and said for the whole
18 company, because *Landers* says that you can deduct indirect
19 costs if it's assigned to a specific or if it's identifiable to
20 a specific contract.

21 So I renew my objection with respect to the 1006 not
22 having any supporting documents other than this summary. And
23 the same objection is going to hold true with all the rest of
24 these. You know, we sat here while we were doing it and tried
25 to discern or come up with cross-examination from a summary

1 chart. And this witness didn't know if the back-offs -- in
2 other words, if they had a contract with M.D.O.C. to provide a
3 thousand people but they only had 500, then the Commissioner
4 wouldn't approve that, so they had to back those charges out of
5 this revenue. He couldn't tell us that. He assumed it was
6 there. He has got the documents, but he interpreted the
7 subpoena not to require them.

8 And again, earlier the government keeps saying we
9 could subpoena it. Judge, I'm ready to go to sentencing
10 tomorrow with the presentence report as written. The
11 government has the burden if they want to now try to convince
12 you to use an alternative method under 2C1.1 which is really
13 the only issue we are here about. They want to try another
14 alternative method. Athena, the U.S. Probation Department has
15 a printed prepared presentence report that lists all of those
16 contracts, 868 million. Now what we saw today is we saw some
17 change. They had a \$19 million figure in the presentence
18 report, but now it's really 148 million. But really when you
19 get down to it, it's 2 million, because you net it out.

20 So they want you to use -- don't use the 1.4 million,
21 the 14-level enhancement; use some other number that we're
22 going to have to spend a year to try to determine. And I
23 submit to you that the case law says that you have to make a
24 reasonable estimate on loss although this is not really a loss.
25 And 2C1.1 says it doesn't have to be exact. And that you have

1 got that. Two of the four ways -- two of the four alternative
2 approaches under 2C1.1 you have that's not even in dispute.
3 It's \$1.4 million payment and/or the benefit he received is
4 \$1.4 million payment. What we don't have is the net benefit,
5 if that's the proper term, that these companies received
6 because of or based on the bribe. So you're going to have to
7 have all these companies come up in here and talk about their
8 net benefit, what's deducted, what's included, what's not
9 included. Then they have to prove that contract, this GEO
10 contract, was only given as result of the bribe. That's going
11 to be a little hard, especially since they have been doing
12 business with them since '95.

13 So they say, Oh, we are just going to look at from the
14 time Cecil paid them, 2007. Cecil doesn't get there until
15 August. Okay. We are just going to look at the amount from
16 August. So it becomes a lot more complicated.

17 I think back to my original request for the
18 continuance, so my request for a continuance was twofold. One
19 is I have to have the documents if we have to go through this
20 extensive multi-faceted calculation; or two, I'm ready to go
21 for sentencing in July based on the presentence report as
22 written. And that's exactly what probation did. And what
23 probation said, if the court recalls, and I know the court has
24 read it, is where these numbers are too hard to find, the court
25 can look at what we've got and it can depart upwards or

1 downwards based on Footnote 7 to the guidelines. And she
2 clearly says that to you twice in this particular presentence
3 report.

4 So, again, I think it's not so much of the contracts
5 awarded. The Fifth Circuit says it doesn't matter if it was
6 800 million or 10 billion. What was the net benefit as a
7 result of the bribe? And I think computing that number or
8 trying to arrive at that number, Your Honor, is going to take
9 probably four or five more hearings. And I think that it would
10 be a waste of time and judicial economy, and I think the court
11 has with it right now in the presentence report sufficient
12 information to impose an appropriate sentence in this case.
13 Thank you.

14 THE COURT: Mr. Tanner, are you joining in?

15 MR. TANNER: No, Your Honor. I was just -- I join in
16 on his -- again, I join in on his motion to continue the
17 hearing, but I don't know if the court wants argument. I just
18 had a brief argument about that document to the extent it would
19 be noted as in evidence as opposed to just an item marked for
20 identification, Your Honor.

21 I would argue, Your Honor, that they have not laid a
22 proper foundation for showing that this document should come in
23 as a summary. On the one hand, they kept pointing out the fact
24 that this gentleman was here only to testify about the three
25 pages of the chart that he put together, and yet when they

1 offered it to the court, they offered the entire document.

2 So he testified specifically that he had nothing to do
3 with the majority of the production other than those three
4 pages. So we would argue that those additional pages should
5 come out for that reason.

6 On the second point, as to those three pages
7 themselves, Your Honor, they have not laid a foundation that
8 shows that they should come in even as a summary. Your Honor,
9 there has been no testimony that the underlying documents --
10 and I don't mean just the report. It doesn't matter how long
11 the chain goes. The documents which underlie those reports,
12 they have to put them in as a business record. Right? They
13 have to show that these documents were kept, maintained,
14 generated or what-have-you, you know, contemporaneously or at
15 or about the same time by somebody who would have known what
16 they are and why they were put in. This gentleman can't
17 testify to that, and he didn't. And so this is not some case
18 where we are looking at an indicia of reliability, Your Honor.
19 We just scratched a tip of the iceberg, particularly if you go
20 with the government's longstanding theory, which is that this
21 whole thing was about a bribe and that's the only reason these
22 people got involved in this case; and further that Mr. McCrory,
23 I think my esteemed colleague, Mr. LaMarca, said earlier that
24 it was a big windfall to him, insinuating he did nothing for
25 the work. Well, if that is true, then we have to assume that

1 the people that paid this so-called bribe knew that it was a
2 bribe. And, as such, they are -- they are incentivized to
3 minimize numbers, to hide the ball on numbers or to say the
4 numbers are something that they may not be. So this does not
5 have the indicia of reliability for which we would just
6 normally dispense with the rules that require them to produce
7 the underlying documents.

8 And so, for that reason, Your Honor, we would ask that
9 all parts of that just be entered as for identification only
10 and not as evidence.

11 THE COURT: All right. Thank you. Mr. LaMarca, what
12 about the objection as to this document being but a summary and
13 the defense's objection that a summary has to be -- has to have
14 supporting documentation?

15 MR. LAMARCA: I would -- I would concede that, were we
16 in trial. This is a hearing to determine sentence, loss
17 calculation. The court is well aware that the rules of
18 evidence don't apply. I do grant the court -- that the court
19 must find the evidence reliable, and that's the gravamen of
20 what we are doing here today. Does the court believe that the
21 evidence presented was reliable? Does the court have enough
22 information from the witness to determine that evidence was
23 reliable? Not whether it passes the rules of evidence but
24 whether it is reliable.

25 The witness testified that he went through these

1 documents, gave the summary in compliance with the subpoena
2 that was issued requesting the information that this court
3 needs to arrive at the net benefit in this case. We are here
4 to talk about the sentencing, the loss amount as it pertains to
5 net benefit. I don't want to get lost in this word *loss*
6 amount. It is the net benefit that the Fifth Circuit has said
7 we should strive to determine. Strive. And if we can
8 determine it with reasonable -- under a reasonable basis and if
9 it's higher than the 1.4 million in bribe amounts, then we
10 should use the net benefit in calculating the guidelines.

11 Each witness is here to testify as to the financial
12 data pertaining to that particular company, the gross revenue
13 and the net benefit based upon the instructions of the Fifth
14 Circuit. This witness was here. This witness relied upon
15 business records of his company. As he said, where do you
16 stop? I shouldn't say he said this, but he said if you drill
17 down deep enough, you would have voluminous records of just
18 timecards of employees, insurance payments, unemployment
19 benefit payments, all of that for the defense to determine
20 whether this dollar should have gone in this column or this
21 column.

22 These were records relied upon by this company
23 pursuant to the testimony to make company decisions on
24 profitability and on actions based upon this company's
25 financial condition. And that financial condition was

1 determined by this witness. In other words, as this court has
2 said so many times, even for a jury trial, if they would rely
3 on this in their most important affairs, that would rise to the
4 point of being beyond a reasonable doubt. And in this case,
5 this witness testified that he took these numbers from their
6 profit and loss statement strictly to comply with the subpoena
7 as issued in an attempt to get this court the information it
8 needs to get a guideline calculation based on net benefit or
9 based on the bribe amount. And that was the effort made, and
10 that is what this witness came to testify to in compliance with
11 this subpoena.

12 Is it sufficient? Is it reliable? I submit to the
13 court it is and that each and every person who is here to
14 testify can do so in the same manner that the court has heard
15 through the testimony of Mr. Tyrrell. Thank you.

16 THE COURT: All right. Thank you. I'm ready to make
17 a ruling on this matter. This court is uncomfortable with this
18 procedure as it is now crafted. What I have before me would be
19 some summaries, some witnesses who would testify to those
20 summaries; but nevertheless, I have before me summaries that
21 have been submitted to the defense at the last moment,
22 witnesses who were not identified to the defense prior to
23 today. The defense has had no opportunity to study these
24 records to determine how they wish to address those records,
25 whether they wish to probe further or in what direction.

Defense was not provided the names of witnesses who were supposed to be sponsors so the defense then would know whether they are, indeed, prudent sponsors. The defense then may not have had enough opportunity to go over in detail with their clients on these records. So what we have here is some material submitted to the defense at the last minute where the defense is expected to craft a meaningful cross-examination without any meaningful preparation for such. The court is uncomfortable with that proceeding.

The defense should have time to study documents so important to sentencing, time to determine if the defense wishes to rely upon those documents or submit others in conjunction with same or challenge those very documents. This court is not satisfied that production of these documents when they were produced afforded the defense enough time to carefully and prudently study these documents so that they would be prepared to address these matters as the court wishes them to do.

So then the court is going to grant the motion for a continuance. I wanted to hear a witness before I made this determination because this matter has taken some time. This matter has been continued on more than one occasion; but nevertheless, each time the continuance has occurred, there has been a justifiable reason for the continuance.

25 At the last session when I set this matter for today's

1 date, I expected that the defense would have the documents and
2 that the defense would have these documents weeks before the
3 hearing. I did not anticipate or expect that the defense would
4 get these documents mere days before this hearing. The
5 prosecution advises me that it had just received these
6 documents. The prosecution also said that at one point the
7 prosecution would not have objected to a three-week continuance
8 so the defense could study the documents but apparently
9 withdrew that agreement once the witnesses had been subpoenaed
10 to come here today.

11 So then what I'm hearing is that at first blush the
12 prosecution would not have opposed this continuance but only
13 did so because the prosecution had expended monies on the
14 travel of these witnesses. So this court is going to grant a
15 continuance. During this time period, the defense should be
16 afforded all of the documents. All of the documents. Next,
17 the defense, after studying those documents, should submit to
18 the court in writing what avenues the defense proposes towards
19 those documents.

20 For instance, the defense has asked about the
21 supporting documents for these summaries. The witness said
22 that the supporting documents are voluminous. Well then the
23 defense does not have to have these voluminous papers, but if
24 they would have some opportunity to view these on computers,
25 then they would not have to have it all reduced to papers. So

1 then I think there are some other ways of determining what
2 documents in support that the defense might need, because there
3 is another option, and that is for them to travel to the
4 company and then to study the computer and be able to go to the
5 company and see the company representatives punch the buttons.

6 So there are other options to having just voluminous
7 papers submitted to the court or made available to the court or
8 to the defense; but regardless of which method is chosen, the
9 court feels that the defense is entitled to be able to verify
10 the accuracy of a summary. The prosecution is correct that the
11 court does not have to follow the strict rules of evidence at a
12 sentencing, but, on the other hand, I think the point made by
13 the defense is telling; that out of fairness, defense out to be
14 able to challenge the documents or verify the credibility of
15 the documents and not be stuck with a simple summary. Were
16 this a matter that was going to trial, then the prosecution
17 would have to have the underlying documents before someone
18 could testify as to a summary. And even though that rule is
19 not necessarily binding on a court at sentencing, this court
20 feels that the defense ought to be allowed an opportunity just
21 as at a trial to get at a document's veracity.

22 Then there is another matter that concerns me. I
23 asked at the top of the examination whether this company was a
24 target. I have been told by the prosecution, quote, not at
25 this time, and that apparently the prosecution doesn't believe

1 that this company will be a target. I have no information to
2 say that this company is a target or will be a target, but then
3 I have heard Mr. Tanner in his cross examination where he wants
4 to, I believe, imply that maybe there is some criminal taint
5 with regard to this corporation or some other corporation. I
6 believe that before we go forward on just summaries without
7 cross-examination possibilities of those summaries that the
8 defense ought to be able to develop its entire theory as to
9 involvement of other people and mitigation of any matters
10 concerning the defendants here.

11 Another matter. I understand that some of the
12 companies are going to submit to the court a motion for
13 protective order. I didn't know that was coming. I would like
14 to have the motions for protective order, and this is directed
15 at the government, the motions for protective order filed, and
16 then I will review those motions first of all in camera so I
17 can understand what is the thrust of the motion and then
18 thereafter hold a quick hearing on the motion for protective
19 order.

20 The law allows protective orders to be filed and
21 granted when information divulged in open court would prejudice
22 irrevocably some party. Just because a company doesn't want
23 its finances revealed is not enough for a protective order.
24 The basis for protective order has to be greater than that. At
25 this juncture, I simply have been notified that some companies

1 want a protective order. I don't know the names of those
2 companies. I don't know what business they are in. I don't
3 know if the protective order is supposed to be based upon some
4 competitive edge that might be destroyed if some information is
5 divulged in open court.

6 So what I want then is a motion for a protective order
7 to be submitted in writing with the grounds for such. I will
8 read it and then make a determination after I have determined
9 the position of the parties with regard to same.

10 Then with regard to these companies, these 15
11 companies that are expected to testify, the names, positions of
12 the alleged sponsors for the documents to be submitted to the
13 court should be provided to the defense along with a paragraph
14 as to why those individuals are appropriate sponsors. Of
15 course, all of this will be filed so the court can review it
16 itself. So these are the matters that I think that must be
17 addressed prior to the court going further.

18 Now, we started off at one point with 300 or
19 500 million, and now we are at 800 million. I ask the
20 prosecution will there be any other suggestions for an
21 increase?

22 MR. LAMARCA: Your Honor, the only increase would be
23 these figures -- the \$800 million figure was based upon the
24 contracts that were let. The only difference that the court
25 may hear could be the actual revenue pursuant to those

1 contracts which may be larger or smaller to some degree than
2 the actual face value of that contract. And that may be due to
3 circumstances that the company can testify to as to why those
4 figures are different. But the actual revenue to give the
5 court a clear picture of what they actually earned through
6 those contracts may, in fact, be different than the total
7 figure that the court had seen in the PSR.

8 THE COURT: Okay. Next question. Mr. LaMarca, if we
9 had proceeded today, we probably would have heard some names of
10 persons who have not been indicted at this point. Is that so?

11 MR. LAMARCA: You may have based upon the court's
12 ruling that you would allow the defendants to get into
13 mitigation testimony today.

14 THE COURT: Then, when we return, will that
15 circumstance be the same? That is, do you anticipate that when
16 we come back that those persons will still be unindicted or by
17 that time indicted?

18 MR. LAMARCA: We had initially, Your Honor, back I
19 want to say in April discussed this very issue and are going to
20 have that scenario concluded by July I think 19th, the date of
21 the actual sentencing. So based upon the court's ruling today
22 that defendants may be able to get into the mitigation as to
23 these contracts and to the value of these contracts, or I
24 shouldn't say value, whether the contracts pertain to this
25 scheme or not, I think that's my appreciation of it, and the

1 court's ruling that they will be allowed to do so, then that
2 would -- depending upon when the court wants to reconvene this
3 hearing, that would move up if it reconvenes it before
4 July 19th, the government's plan to have all these matters
5 concluded that would be affected by this case by that date.

6 THE COURT: Now, let's talk about our schedule. Mr.
7 LaMarca, by what date can you provide to the defense all of the
8 documents that the court ordered previously and may have to
9 order to supplement what has now been submitted?

10 MR. LAMARCA: Your Honor, that would -- of course,
11 it's hard for me to say based upon the cooperation I receive
12 from each of the people that we subpoena to acquire this
13 information. If we issue the subpoena returnable in two weeks
14 to obtain this information, it's going to be up to each
15 individual. We can say bring it up with the court if you can't
16 comply with it in the manner that the subpoena is issued based
17 upon what the court has asked us to do at this point, and then
18 those individuals can make representations to the court whether
19 the subpoena should be quashed or limited in some fashion. It
20 would be between the entity subpoenaed and this court. So we
21 can issue the subpoena requesting this information for any date
22 that would be reasonable to get the backup documents from all
23 of these other companies to give them a reasonable time to do
24 it.

25 THE COURT: I had put down on my notepad that two

1 weeks might be reasonable. Now, you mentioned two weeks
2 yourself. So do you think two weeks is reasonable?

3 MR. LAMARCA: It would be to me. I'm not the one
4 producing the documents and gathering those documents, but it
5 would be to me. You know, each of these entities and these
6 companies, whether they can or can't in two weeks would be --
7 that would be their issue at that point, Your Honor.

8 THE COURT: Let me turn to the defense. I'm just
9 asking you now about the subpoena to the company, not about
10 your review time. So with regard to the subpoenas to the
11 companies to produce documents, and during this time period
12 were you to meet with the prosecution and other defense
13 counsel, all of you all meet together to determine what method
14 will be most efficient in providing to you the needed
15 underlying information that you would have -- now I know some
16 would have to wait until you get all of the information, but
17 give me a proposed schedule on the production.

18 MR. COLETTE: I'm not sure I'm clear. If Darren says
19 he is going to issue subpoenas in two weeks --

20 THE COURT: Issue subpoenas now to be returnable in
21 two weeks.

22 MR. COLETTE: Okay. The only caveat I have with that,
23 Judge, is Darren issued 15 subpoenas returnable for today. I
24 have only received seven or eight submissions. Now maybe they
25 have gotten some more or maybe there is reason why they didn't

1 comply with those subpoenas which would then cause me some
2 concern why would they comply again. But assuming he has the
3 subpoenas, the documents returnable to him in the office within
4 two weeks and I get copies of that, we would need I guess two
5 weeks to review it. It's not my burden. Obviously it's his.
6 And I understand what he has on his attachment to the subpoena.
7 But I think as a suggestion, and I don't know if it's even
8 feasible, what would make my job easier in trying to ascertain
9 this number that we are all trying to find I think would be
10 something similar to where they have the line items of the --
11 because the gross contract value is not a number we really care
12 about. It doesn't really apply. It looks bad, huge, but the
13 court is not looking at that. But to break it down with the
14 deductions from the gross, the allowable deductions, and Darren
15 and I may differ somewhat on that, but at least if there are
16 line items like with GEO and had a summary so I know with
17 respect to like Athena did in the revised presentence report on
18 26, with respect to the CCI company, the gross value is
19 whatever the net value or the net benefit is X, then I have got
20 a number to know what we are looking at. You total up those
21 numbers and that's what gives the proposed guideline
22 sentencing.

23 So I say all of that that if they could get the folks
24 to provide them with a more succinct document that's usable
25 here, what we are looking at, I mean copies of the contracts,

1 we've got most of those. You know, checks to Cecil, that's not
2 my argument. But I need at least I think to be a little
3 cautious, I need two weeks after receipt of the documents. But
4 I have got to have full submission. If I see something on the
5 submission like when they gave me these documents and I only
6 got one page, all right, I can send Darren an e-mail and say
7 this is not getting it. I have got to know how they came with
8 that number. And he says you have got the right to subpoena
9 them people like everybody else -- I don't have a burden here.
10 They have got the burden. I am fine with the presentence
11 report. I want that clear. Any other number the government
12 proposes to use, they have got to bring the folks here. Not
13 me. I'm happy with the number I have got. But I need at least
14 two weeks to analyze whatever documents if I get compliance,
15 Judge, because I don't want to be back here again. And on
16 several of these, I don't have anything. I am not saying
17 Darren has them either. I never alluded to that. I don't
18 think some of these folks complied with it.

19 THE COURT: Okay. Other defense counsel, do y'all
20 have anything else you would like to add?

21 MR. BAIN: Your Honor, as to us, again, we're very
22 limited in what we have. I think that timeframe would be okay.
23 The question I have is Mr. Waggoner was subpoenaed as an
24 officer of CCI, so he is actually to comply with some of this.
25 And I don't know -- one of the reasons he has an accountant

1 that will be back, and I think we can get some of those
2 documents, but going with -- it's kind of twofold, going with
3 him to comply with the subpoena and then to review those, I
4 think we are okay with that timeframe, but I have some
5 questions that maybe I can clear up with Darren after court
6 about that. But otherwise, I think we're okay.

7 THE COURT: All right. And Mr. Tanner?

8 MR. TANNER: The question being how long would I need
9 to review it?

10 THE COURT: Not review it. I'm talking about the
11 production from the companies, two weeks. I'm thinking about
12 ordering the subpoena to be issued returnable in two weeks.
13 And then thereafter, once you have acquired the documents, I
14 will talk about how much time you need for review. Because
15 then I will know how much material has been produced and then
16 whether all of the material has been produced.

17 MR. TANNER: Yes, Your Honor. I thought at the
18 outset, Your Honor, and I maybe heard you wrong, I thought at
19 the outset defense counsel was supposed to get with Mr. LaMarca
20 and we kind of at least try to fashion what it might be that we
21 are looking for now that we have a place to start.

22 THE COURT: But in the meantime, I want Mr. LaMarca to
23 subpoena the companies to make sure that the information that
24 he initially requested has been brought here. Now, and the
25 backup stuff, whatever you might need, you can talk to him

1 about it trying to see if you can get that to see if you all
2 can work that out informally. If not, then in two weeks when
3 materials are supposed to be here, I will address whatever
4 concerns you have.

5 MR. TANNER: Yes, Your Honor. In that case, I'm fine
6 with the two weeks. I didn't recognize it was two-tiered. I
7 get it.

8 THE COURT: I'm just talking about the production at
9 this point, not the review. Thank you. So, Mr. LaMarca, can
10 you put those subpoenas together and reissue the ones that have
11 been issued that have not been complied with thus far and issue
12 any new subpoenas that need to be issued and get that out today
13 or first thing tomorrow morning?

14 MR. LAMARCA: Yes, Your Honor, we can. And we will
15 attempt to discuss with defense counsel as well to in this next
16 round of subpoenas to go ahead and get as much information as
17 they would require and as the companies can provide with the
18 backup documentation for these figures.

19 In addition, Your Honor, we had served several
20 subpoenas to individuals on behalf of companies and we have not
21 heard from, nor do we see the representative here today who was
22 served with that subpoena. And we would ask for an order of
23 the court, a show cause order, to require those people or
24 those -- actually those people to appear before the court to
25 show cause why they should not be held in contempt should they

1 have some defense as to whether they were an actual
2 representative of the company or not. We had reason to believe
3 that they were a representative of the company. They were
4 served, yet it's my understanding that they are not present
5 today with any documents or individually to attend this hearing
6 as required by the subpoena.

7 THE COURT: If you encounter any recalcitrant with
8 regard to these subpoenas, I would expect that the prosecution
9 would notify me immediately, because earlier, again at the top
10 of these proceedings, you said that there were 15 companies
11 that had been the recipient of subpoenas but that you were just
12 going to go forward today with 10, and I guess the other five
13 were to be submitted later. But now you advise me that some of
14 these five did not respond?

15 MR. LAMARCA: At all. And we did not know whether
16 they would even be here today, and we do not see the
17 representative who was served here today. And it's with regard
18 to two of those companies.

19 THE COURT: All right. This is the first time I have
20 known that. I need to be advised of these developments as fast
21 as possible so we can keep this case on track. So as soon as
22 you have some notion about recalcitrants, then I should be
23 advised so I can submit the appropriate order on that. Of
24 course, you always have to advise the defense of these actions
25 so it's not ex parte.

1 MR. LAMARCA: Yes, sir. That was my attempt right now
2 to advise the court because they were returnable for today.

3 THE COURT: Then submit to me the proposed show cause
4 order and I will sign it.

5 MR. LAMARCA: Yes, Your Honor. And that's on two of
6 the five, one being Admin Pros was not served. The -- one of
7 the companies, Sentinel 4, G4S, G4S is a company operating out
8 of London, England, who is not amenable to the service without
9 the Office of International Affairs. We will take whatever
10 efforts we can to accomplish that, but I advise the court and
11 defense counsel that that particular effort may prove fruitless
12 because of the timeframes that we are working on and the
13 government may end up not going forward with regard to the net
14 benefit on that particular contract, Your Honor.

15 THE COURT: And how much is that contract?

16 MR. LAMARCA: Approximately 2.6 million. In gross.

17 THE COURT: Okay.

18 MR. LAMARCA: But I wanted to make defense counsel and
19 the court aware of that particular circumstance with regard to
20 that company.

21 THE COURT: Okay. Then draft me an order reflecting
22 what I have ordered today, show it to defense for their
23 approval as to form and content.

24 MR. LAMARCA: Yes, Your Honor.

25 THE COURT: All right, then. After two weeks, we will

1 meet again. Twana, give me a date two weeks from now so
2 everyone knows when we are supposed to recongregate.
3 June 23rd, 2016. What time? 9:00. At 9:00 a.m. All right,
4 then.

5 MR. LAMARCA: Excuse me, Your Honor. And that
6 particular hearing will be to assess the status of the service
7 or actually the return on those subpoenas and where we are to
8 go from that point. Is that fair?

9 THE COURT: That's correct.

10 MR. LAMARCA: Thank you, Your Honor.

11 THE COURT: Let's see. Maybe that's too close.
12 That's two weeks from now, and you want to make your subpoenas
13 returnable in two weeks. Right?

14 MR. LAMARCA: That is true. Yes, sir.

15 THE COURT: So I need another day or two after that,
16 Twana.

17 (SHORT PAUSE)

18 THE COURT: The 29th of June. June 29th at 9:00 a.m.

19 MR. LAMARCA: Yes, Your Honor. Thank you.

20 THE COURT: All right. We are adjourned.

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2 CERTIFICATE OF REPORTER

3

4 I, BRENDA D. WOLVERTON, Official Court Reporter,
5 United States District Court, Southern District of
6 Mississippi, do hereby certify that the above and foregoing
7 pages contain a full, true and correct transcript of the
8 proceedings had in the aforesigned case at the time and
9 place indicated, which proceedings were recorded by me to
10 the best of my skill and ability.

11 I certify that the transcript fees and format
12 comply with those prescribed by the Court and Judicial
13 Conference of the United States.

14 This the 10th day of June, 2016.

15

16 s/ Brenda D. Wolverton
17 BRENDA D. WOLVERTON, RPR-CRR

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